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# TRANSCRIPT OF RECORD

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 196

THE UNITED STATES OF AMERICA, PETITIONER

vs.

PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

**PETITION FOR CERTIORARI FILED JULY 1, 1935**
**CERTIORARI GRANTED OCTOBER 14, 1935**

# SUPREME COURT OF THE UNITED STATES

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1 In United States Circuit Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

AGAINST

PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY, SUCCESSOR to The Bank of Manhattan Trust Company, Defendant-Appellee

*Statement under rule 13*

On August 25, 1934, the above-entitled suit was commenced by the complainant, United States of America, against the defendant, President and Directors of The Manhattan Company, successor to The Bank of Manhattan Trust Company, by filing a verified bill of complaint in the District Court for the Southern District of New York and by the issuance of a subpoena.

On August 25, 1934, an order to show cause, supported by an affidavit, was signed, temporarily restraining defendant and requiring to show cause on August 28, 1934, why complainant's motion for an injunction pendente lite should not be granted. On August 25, 1934, the defendant was served with a subpoena, a copy of the bill of complaint and a copy of the order to show cause signed August 24th.

2 Argument was had before Honorable Alfred C. Coxe, United States District Judge, on October 4 and October 6, 1934. In an opinion dated November 28, 1934, and filed November 30, 1934, Judge Coxe denied complainant's motion for an injunction pendente lite and recited that he granted defendant's motion to dismiss the complaint for insufficiency. On December 20, 1934, an order and decree was filed denying complainant's motion for an injunction pendente lite and granting defendant's oral motion to dismiss the complait for insufficiency and suspending the operation of the order and decree until the determination of the appeal by the complainant. On December 22, 1934, the appeal was allowed.

In United States District Court

*Subpoena*

E. 78—383.

THE PRESIDENT OF THE UNITED STATES, TO PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY, SUCCESSOR TO THE BANK OF MANHATTAN TRUST COMPANY, GREETING:

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in a suit in Equity, by United States of America, and to further do and receive what the said Court shall have considered in this behalf. And this you are

not to omit under the penalty on you of Two Hundred and Fifty ($250) Dollars.

Witness, Honorable John C. Knox, Judge of the District Court of the United States for the Southern District of New York, on the 25th day of August, in the year One Thousand Nine Hundred and Thirty-four and of the Independence of the United States the One Hundred and fifty-ninth.

CHARLES WEISER, *Clerk.*

MARTIN CONBOY,
*U. S. Attorney, Solicitor for Complainant, U. S. Courts & P. O. Bldg., Broadway and Park Row, New York City.*

The defendant is required to file its answer or other defense in the above cause in the Clerk's Office on or before the twentieth day after service hereof, excluding the day of said service, otherwise the bill aforesaid may be taken Pro Confesso.

[SEAL] CHARLES WEISER, *Clerk.*

In United States District Court, Southern District of New York

Equity 78/383

UNITED STATES OF AMERICA, COMPLAINANT

AGAINST

PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY, SUCCESSOR to the Bank of Manhattan Trust Company, defendant

Complaint

*To the Honorable Judges of the District Court of the United States for the Southern District of New York.*

The United States of America, by its attorney, Martin Conboy, United States Attorney for the Southern District of New York, complains of the defendant herein and alleges on information and belief:

I

That the complainant herein is a corporation sovereign and body politic.

II

That the defendant was at all times hereinafter mentioned and now is a corporation organized and existing under and by virtue of the Banking Law of the State of New York, with its principal office and place of business at 40 Wall Street, Borough of Manhattan, City of New York, and is an inhabitant and resident of the Southern District of New York.

III

That the Northern Insurance Company of Moscow, Russia, at all the times hereinafter mentioned, with the exceptions hereinafter noted, was a corporation, organized under the laws of the State of Russia, to transact the business of insurance, and was authorized by compliance with the requirements of the laws of the State of New York to transact such business in this State; that the said insurance company, as part of its compliance with the requirements of the laws of the State of New York, deposited with the Superintendent of Insurance as a fund out of which should be paid the claims of domestic creditors of said corporation, cash, securities, and other items of value; that the Northern Insurance Company of Moscow possessed assets and items of value in the United States other than and in addition to the said fund deposited with the Superintendent of Insurance.

IV

That heretofore and in the latter part of 1917 and the early part of 1918, or thereabouts, the said Northern Insurance Company of Moscow, Russia, was by decree of the Russian State dissolved and all of its right, title, and interest and all the right, title, and interest of all its stockholders in its property, including the deposit
6 hereinbefore mentioned with the Superintendent of Insurance of the State of New York, and the other assets of the Northern Insurance Company in the United States hereinbefore mentioned, were confiscated and appropriated by the said Russian State.

V

That heretofore and on or about August 3, 1933, the claims of domestic creditors to the said fund so deposited with the Superintendent of Insurance of the State of New York having been satisfied, the said Superintendent of Insurance, pursuant to an order of the Supreme Court of New York, New York County, directing that the said fund be released, paid, transferred, and delivered to the defendant as agent or depositary of the said Northern Insurance Company of Moscow, Russia, said fund not to be withdrawn except upon the order of a court of competent jurisdiction, delivered to the defendant, and the defendant received from the said Superintendent of Insurance the balance of said fund then consisting of cash, securities, and other assets described as follows:

| | |
|---|---|
| Cash | |
| City of New York corporate stock | $154,307.60 |
| 4¼% 1962 par value | 16,000.00 |
| Imperial Russian Govt. Bonds, 6½% 1919 par value | 75,000.00 |
| Total | 245,307.60 |

that in addition to the aforesaid cash securities and other
7 assets, the defendant received from the Northern Insurance Company of Moscow, Russia, on or about March 13, 1934,

cash securities or other assets in the value of $87,686.45; and that all the said cash, securities, or other assets of the value of $332,994.05, or the avails thereof, are now in the possession of the said defendant.

VI

That on or about November 16, 1933, the Russian State assigned to the complainant, for a valuable consideration, all of its right, title and interest in and to the aforesaid cash, securities and other assets, and also assigned to the complainant all the right, title and interest of all Russian nationals in and to the aforesaid cash, securities and other assets, and since November 16, 1933, the complainant has been and now is the sole and exclusive owner, entitled to the immediate possession of the aforesaid cash, securities and other assets now in the possession of the defendant.

VII

That prior to the institution of this suit, complainant duly demanded of the defendant the said cash, securities and other assets, together with the proceeds and avails thereof, but the defendant has refused to deliver the same or any part thereof to the complainant and continues wrongfully to withhold the same from the complainant, and now wrongfully possesses the said cash, securities and other assets or the avails thereof. That as to the complainant since November 16, 1933, the possession of said property by the defendant has been wrongful and the defendant still wrongfully detains the same from the complainant.

8

VIII

That by reason of the defendant's possession of the said cash, securities and other assets received on or about August 3, 1933, pursuant to the aforesaid order of the State Supreme Court that the said cash, securities and other assets would not be withdrawn except upon the order of a court of competent jurisdiction and by reason of the defendant's possession of the said cash, securities and other assets received on or about March 13, 1934, and by reason of the complainant's demand for the said cash, securities and other assets and the increase and avails thereof and the proceeds thereof, and by reason of the defendant's wrongful refusal to deliver the same or any part thereof to the complainant, and by reason of the defendant's continuing to wrongfully withhold the same from the complainant, the defendant holds the same for the complainant as fiduciary and trustee for the complainant.

IX

The complainant has no complete, plain, and adequate remedy at law for the relief sought herein and therefore institutes this suit in equity.

Wherefore, the complainant prays:

(a) that a subpoena issue to the defendant named herein commanding it to appear on a certain day and answer this bill of complaint and to abide by such orders and decrees as this court may make in the premises;

9 (b) that the defendant herein, its successors, officers, agents, attorneys, employees, or assignees, and all persons or corporations acting under their direction or in their behalf, be enjoined and restrained permanently and pending the determination of this suit from paying out or distributing to anyone, other than this complainant, any part of the said cash, securities, and other assets or the avails thereof;

(c) that the defendant be required by a decree of this Court to make a full, just, and complete account under the direction of this Court, and to pay over to the complainant the aforesaid cash, securities and other assets and the proceeds and avails thereof and all interest, dividends, gains, and profits as have accrued or arisen or have been earned or received therefrom by the defendant and all such gains or profits as would have accrued to the complainant but for the wrongful detention of said cash, securities, and other assets by the said defendant and all damages the complainant may have suffered or sustained thereby;

(d) that the complainant may have such other and further relief as the case may require and the court may deem just in the premises.

MARTIN CONBOY,
*United States Attorney for the Southern District of New York,*
*Attorney for Complainant.*

Office & P. O. Address: U. S. Courts & P. O. Building, Borough of Manhattan, City of New York.

10 *Duly sworn to by Edward J. Ennis; jurat omitted in printing.*

11 In United States District Court, Southern District of New York

[Title omitted.]

*Order to show cause*

On the annexed affidavit of Edward J. Ennis, Assistant United States Attorney in and for the Southern District of New York, sworn to on the 24th day of August, 1934, on the verified bill of complaint filed herein on the 25th day of August 1934, and

It appearing to the satisfaction of this Court that the complainant is entitled to the relief demanded by the bill of complaint in this suit, and

It further appearing that in order to enable this Court to adjudicate the right of the complainant to the cash, securities and other

assets referred to in the complaint, and to effectively exercise its jurisdiction and enforce its judgment, it is necessary and proper that the aforesaid cash, securities and other assets remain in possession of the defendant pending the adjudication by this Court of the rights of the complainant, it is

12 Ordered that the defendant be and appear before this Court at a Stated Term thereof for the hearing of motions to be held on the 28th day of August, 1934, in Room 235 of the Old Post Office Building, in the City, County, and Southern District of New York, Borough of Manhattan, at the hour of 10:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, then and there to show cause, if any it has, why the defendant, its officers, agents, attorneys, employees, assignees, successors and all persons or corporations acting under its direction, or in its behalf, or in privity with it or claiming so to act, should not be enjoined and restrained as prayed for in the said bill of complaint herein, and meanwhile let the defendant, its officers, agents, attorneys, employees, assignees, successors and all perons or corporations acting under its direction, or in its behalf, or in privity with it or claiming so to act, be stayed, restrained, and enjoined from distributing any of the said cash, securities, and other assets pending the determination of this motion.

Let service hereof be made upon the defendant by service personally upon an officer or authorized agent of the defendant of a copy, which need not be certified, on or before August 25th, 1934.

Dated, New York, N. Y., August 25th, 1934.

HULBERT, *U. S. D. J.*

13 In United States District Court, Southern District of New York

[Title omitted.]

*Affidavit attached to order to show cause*

Edward J. Ennis, being duly sworn, deposes and says:

1. That he is an Assistant United States Attorney for the Southern District of New York in charge of the above-entitled matter.

2. That the Northern Insurance Company of Moscow, Russia, at all the times hereinafter mentioned, with the exceptions hereinafter noted, was a corporation, organized under the laws of the State of Russia, to transact the business of insurance and was authorized by compliance with the requirements of the laws of the State of New York to transact such business in this State; that the said Insurance Company, as part of its compliance with the requirements of the laws of the State of New York, deposited with the

14 Superintendent of Insurance as a fund out of which should be paid the claims of domestic creditors of said corporations, cash, securities, and other items of value; that the said Insurance Company possessed other assets and items of value in the United States.

3. That heretofore and in the latter part of 1917, and the early part of 1918 or thereabouts, the said Northern Insurance Company of Moscow, Russia, by decrees of the Russian State, and particularly by a decree of the Russian State on the organization of the insurance business in the Russian Republic, a photostatic copy of a certified copy of which and a copy of a certified translation of which are attached hereto and made a part hereof, was dissolved and all of its right, title, and interest and all the right, title, and interest of all of its stockholders in its property, including the deposit hereinbefore mentioned with the Superintendent of Insurance of the State of New York, and including other assets and items of value of the said Insurance Company in the United States, were confiscated and appropriated by the said Russian State.

4. That heretofore and on or about August 3, 1933, the claims of domestic creditors to the said fund so deposited with the Superintendent of Insurance of the State of New York having been satisfied, the said Superintendent of Insurance, pursuant to an order of the Supreme Court of New York, New York County, directing
15 that the said fund be released, paid, transferred, and delivered to the defendant as agent or depositary of the said Northern Insurance Company, said fund not to be withdrawn except upon the order of a court of competent jurisdiction, delivered to the defendant, and the defendant received from the said Superintendent of Insurance, the balance of said fund then consisting of cash, securities, and other assets described as follows:

| | |
|---|---|
| Cash | $154,307.60 |
| City of New York Corporate Stock, 4¼% 1962, par value | 16,000.00 |
| Imperial Russian Government Bonds, 6½% 1919, par value | 75,000.00 |
| Total | 245,307.60 |

that in addition to the aforesaid cash, securities, and other assets, the defendant received from the Northern Insurance Company of Moscow, Russia, on or about March 13, 1934, cash, securities, or other assets in the value of $87,686.45; and that all the said cash, securities, or other assets in the amount of $332,994.05, or the avails thereof are now in the possession of the said defendant.

5. That on or about November 16, 1933, the Russian State assigned to the complainant, for a valuable consideration, all of its right, title, and interest in and to the aforesaid cash, securities, and other assets, and also assigned to the complainant all the right, title, and interest of all Russian nationals in and to the aforesaid cash,
16 securities, and other assets, and since November 16, 1933, the complainant has been and now is the sole and exclusive owner entitled to the immediate possession of the aforesaid cash, securities, and other assets now in the possession of the defendant.

6. That in a proceeding in the Supreme Court of the State of New York, New York County, entitled "In the Matter of the Assignment of Northern Insurance Company of Moscow, Assignor" to "The President and Directors of The Manhattan Company, Suc-

cessor to the Bank of Manhattan Trust Company, Assignee for the Benefit of Creditors", a referee has been appointed to examine the account of the assignee and the claims filed with the assignee, and to report to the Court with respect to the said account and claims and with respect to a stipulation entered into by various creditors of said assignees.

7. That the referee appointed in the said State Court proceedings has approved certain claims of foreign creditors of the Northern Insurance Company of Moscow, Russia, and other claimants, aggregating the sum of approximately $50,000.00 and has signed formal reports thereon; that a motion is about to be made in the said State Court proceeding by the defendant herein to obtain an order by the Court authorizing the payment by the defendant to said foreign creditors and other claimants of the said claims approved by the Referee.

8. That prior to the institution of this suit, complainant
17 duly demanded of the defendant the said cash, securities, and other assets, together with the proceeds and avails thereof but the defendant has refused to deliver the same or any part thereof to the complainant.

9. That no application has been made to any court or judge for the relief prayed herein or for similar relief.

Wherefore, deponent makes this affidavit in support of a stay and an order to show cause why the defendant should not be enjoined and restrained permanently and pending the determination of this suit from paying out or distributing to anyone other than this complainant any part of the said cash, securities, and other assets or the avails thereof.

EDWARD J. ENNIS.

Sworn to before me, this 24th day of August 1934.

18 *Exhibit A—Certified copy of Russian text of a decree of the Russian State on the organization of the insurance business in the Russian Republic attached to affidavit verified August 24, 1934*

Certified Translation of Exhibit A

Source: Collection of Decrees and Orders on National Economy (October 25, 1918—March 15, 1919), Volume Two. Published by the Supreme Soviet of National Economy of the Russian Socialist Federated Soviet Republic, Moscow, 1920. Pages 720, 721.

Decree of the Soviet of People's Commissars

603. On the organization of the insurance business in the Russian Republic.

(1) Insurance in all its forms, such as: Fire insurance, insurance on shipments, life insurance, accident insurance, hail insurance, live-

stock insurance, insurance against failure of crops, etc., is hereby proclaimed as a State monopoly.

NOTE.—Mutual insurance of movable goods and merchandise by the cooperative organizations is conducted on a special basis.

(2) All private insurance companies and organizations (stock and share holding, also mutual) upon issuance of this decree
19 are subject to liquidation; former rural* (People's Soviet) and municipal mutual insurance organizations operating within the boundaries of the Russian Republic are hereby proclaimed the property of the Russian Socialist Federated Republic.

(3) For the immediate organization of the insurance business and for the liquidation of insurance institutions which have become the property of the Russian Socialist Federated Soviet Republic, a Commission is established under the Supreme Soviet of National Economy, consisting of representatives of the Supreme Soviet of National Economy, the People's Commissariats of Commerce and Industry, Interior Affairs, the Commissar of Insurance and Fire Prevention, Finances, Labor, and State Control, and of Soviet Insurance Organizations (People's Soviet and Municipal Mutual).

NOTE.—The same Commission is charged with the liquidating of private insurance organizations, all property and assets of which, disclosed at the time of their liquidation, become the property of the Russian Socialist Federated Soviet Republic.

(4) The above-mentioned reorganization and liquidation of existing insurance organizations and institutions shall be accomplished not later than the first day of April, 1919.

(5) The Commissariat of Insurance and Fire Prevention,
20 together with all its institutions, is reorganized into the Insurance Department of the Supreme Soviet of National Economy. The matter of fire prevention is transferred to the Supreme Soviet of National Economy.

(6) No Soviet properties and enterprises are subject to insurance.

(7) Life insurance with the State Savings Banks is conducted upon the former basis.

(8) The present decree comes into force on the day of its publication.

(Signed)

Chairman of the Soviet of People's Commissars
V. ULYANOV (Lenin)
Administrator of Affairs of the Soviet of People's Commissars
V. BONCH-BRUEVICH

("IZVESTIYA of the All-Russian Central Executive Committee of Soviets," December 1, 1918, No. 263).

* zemskie.

[Translator's Note.] I hereby certify that the above translation is conformable with the attached original to the best of my knowledge.

(Signed) IGNATIUS JAWNEY,
*Principal Translator,*
*Department of State.*

Appointed Translator, January, 1928.
Russian.
Tr. IJ:MW:SS.

21 In United States District Court, Southern District of New York

[Title omitted.]

*Affidavit of Andrew Wilson, Jr., in opposition to complainant's motion for injunction*

STATE OF NEW YORK,
*County of New York, ss:*

Andrew Wilson, Jr., being duly sworn, deposes and says: I am a Vice President of the defendant banking corporation herein, and am familiar with the facts herein set forth, and have had charge of the administration of the trust reposed in my bank as assignee for the benefit of creditors of the Northern Insurance Company of Moscow.

I have read the complaint of the Government and the affidavit and order to show cause herein in which the Government seeks a judgment determining ownership in itself of the funds on deposit with my bank, and as incidental relief, seeks an injunction restraining the bank from disbursing any funds to creditors or others pending the hearing and determination of the action.

22 I ask that the application of the Government for an injunction restraining the bank from making such disbursements be denied for the following reasons:

1. The Northern Insurance Company of Moscow is a corporation organized and existing under and by virtue of the laws of the Empire of Russia, and was organized in said Empire in the year 1872; that in and about the year 1911, the said Company, after making the necessary deposits and otherwise complying with the requirements of the Insurance Laws of the State of New York, established its United States branch in the State of New York; that it was licensed to and did transact its appropriate business in said State and elsewhere in the United States until on or about the 17th day of April 1925, when the Superintendent of Insurance of the State of New York applied to this Court pursuant to Section 63 of the Insurance Law of this State for an order to take possession of the assets of said company for the benefit of its policyholders and creditors.

2. Upon information and belief that an order was entered in this Court, dated June 9, 1926, in a proceeding entitled "In the Matter

of the Application of the People of the State of New York by James A. Beha, as Superintendent of Insurance of the State of New York for an order to take possession of the property and assets of the Northern Insurance Company of Moscow, Russia, in the interests of its policyholders, creditors, stockholders, and
23 the public", directing the Superintendent of Insurance of the State of New York to take possession of the assets of the United States Branch of said Company and to liquidate the same under the direction of this Court; that thereafter the said Superintendent of Insurance entered upon his duties as liquidator of the said United States Branch; that on or about the 16th day of December 1932, said Superintendent of Insurance filed his fourth and final report as liquidator of the said Branch with this Court.

3. Upon information and belief the Superintendent of Insurance has paid in full, with interest, all the policyholders and creditors who had obtained their policies from or did business with or otherwise had claims against the said United States Branch in accordance with the rules laid down by the Court of Appeals in Matter of People v. Norske Lloyd Ins. Co., 242 N. Y. 148 and 249 N. Y. 139, and that the only creditors of said Company now remaining unpaid are such creditors who did business with the Company with other than its said United States Branch.

4. That after the payment of such creditors whom I have just referred to, there remained a surplus in the hands of the Superintendent of Insurance belonging to the Northern Insurance Company of Moscow. The Northern Insurance Company of Moscow demanded that the Superintendent of Insurance release and deliver such surplus assets to it, but this demand was refused, and an application was made to the Supreme Court of the State of New York for that relief.

24 5. The matter was passed upon successively by that Court, the Appellate Division of the Supreme Court in this Department, and the Court of Appeals of the State of New York, and on February 10, 1931, the Court of Appeals, after a careful consideration of all the facts and circumstances surrounding the application of the Northern Insurance Company of Moscow, rendered a decision directing the delivery of the surplus assets of the Northern Insurance Company of Moscow, then in the hands of the Superintendent of Insurance, to said Company. Such decision of the Court of Appeals fully recognized the continued existence of the corporation and the fact that it had title to the assets in this jurisdiction, and that it was entitled to receive such assets in spite of the opposition of the Superintendent of Insurance of the State of New York and others who contended that the Northern Insurance Company of Moscow was no longer in existence and that its corporate life had been dissolved and terminated as a result of the very decree relied upon by the Government in this case.

6. The Court, in its decision, which will be found reported in 255 N. Y., page 433, ordered the release of the surplus assets to its then

existing directors upon the terms and conditions contained in the decision of the Court.

7. Just immediately prior to this decision, the Court of Appeals had upheld the corporate existence of the same company and had also supported its contention that it had a right to preserve its
25 assets and collect its claims in a decision reported in 255 N. Y. 120, known as Severnoe against London & Lancashire Insurance Company. However, the Court in that decision held that it would not affirm the judgment against the defendant because the corporation then lacked a quorum. After the direction of the Court of Appeals, which ordered the Superintendent of Insurance to release the surplus assets of the Company to it, it again recognized its continued existence and its title to the assets then in the possession of the Superintendent of Insurance and now in the possession of this bank, by a decision rendered on April 28th, 1933, wherein it directed that the Superintendent of Insurance turn the surplus assets over to the bank as an agent or depositary of the Northern Insurance Company of Moscow.

8. The Supreme Court of the State of New York, in and for the County of New York, thereafter sanctioned and approved an assignment made for the benefit of creditors on behalf of the Northern Insurance Company of Moscow or the 6th day of May 1932 which was filed and recorded in the Office of the Clerk of the County of New York on the 28th day of June 1932, and a bond in connection with which was filed by the bank as assignee, and approved by one of the Justices of such Court on the 2nd day of July 1932. On the following day, the bank filed an inventory and a schedule of the assignor's creditors, and since that date has been duly administering the trust reposed with it pursuant to the provisions of the Debtor and Creditor Law of the State of New York.

26 9. On the 13th day of November 1933, the Supreme Court of the State of New York duly entered its order directing the Bank, as agent or depositary of the Northern Insurance Company of Moscow, to deliver to itself, as assignee for the benefit of creditors of the Northern Insurance Company of Moscow, all funds then remaining in its hands as agent or depositary of said company. That since its appointment and acceptance of the trust as assignee, there has come into its hands a total of $249,813.03 in assets belonging to the Northern Insurance Company of Moscow, and claims of creditors have been made against such funds, excluding disbursements of your petitioner, attorneys' fees and commissions, in the amount of $271,723.22. The claimants in number aggregate nineteen, the greater part of which comprise citizens of the United States or nationals of friendly countries.

10. I depose and say that it was strenuously urged in the various proceedings I have referred to in the Court of Appeals that the company had no standing to maintain the proceeding to reclaim its assets and that a dissolution had been effected by reason of the decrees of the Soviet Government and these matters were presented

with the greatest consideration and deliberation by the parties who were interested in such appeals and the Court of Appeals overruled all of these arguments and either specifically or in effect held that the company was a continuing, functioning corporate entity, and entitled to maintain a proceeding to recover its credits and assets and to distribute them among its creditors and/or stockholders.

27 11. I further depose and say that since the filing of claims with the bank that a careful examination of such claims has been made, and their validity and propriety determined, and to render available a sum in favor of the stockholders a stipulation was effected by and between a number of the creditors whereby the amounts of their claims as filed were reduced and an agreement was made to accept a lesser sum than the face amount of the claim.

12. On or about May 25, 1934, the petition and account of the assignee were duly filed in the Supreme Court of the State of New York in and for the County of New York, and an order was thereupon issued providing for the appointment of a Referee to take and state the account of the assignee herein and to hear any and all objections made and filed to any claims, and to report to the Court with respect to all of the claims of the creditors filed with the assignee as to their validity and proper amounts, and in and by the terms of such order, John Godfrey Saxe, of No. 1 Cedar Street, Borough of Manhattan, City of New York, was duly appointed to take such proof and to take and state the account of the assignee pursuant to the order of the Court, which order was entered on July 7, 1934. The Referee has taken proof with respect to certain claims, and has duly made and rendered his report in writing approving claims aggregating approximately $50,000.00.

28 13. I am advised and verily believe that all of these facts have been known to the Government and until the application, which is now before this Court, was made, no attempt was made by the Government to interfere or intervene in this proceeding or otherwise.

14. I am advised that the Supreme Court of the State of New York has acquired jurisdiction of the assets now in the possession of the bank for distribution and the Government will have an ample opportunity in the proceeding which is now being conducted in the State Court to assert its contention that it is entitled to receive the assets in the bank by virtue of the alleged assignment received from the Soviet Government on November 16, 1933.

15. I further depose and say that the issuance of an injunction by this Court, while directed against the bank as a party defendant in this suit to stay the bank from the disbursement of any funds, is, nevertheless, nothing more or less than an effort to obtain an injunction from a Federal Court staying the prosecution or enforcement of the decree or order of a State Court, and that such relief is an interference with the rights and remedies available to the parties who have come within the jurisdiction of the State Court proceeding.

16. I further depose and say that the assets now in the possession of the bank were not either prior to or at the time of the enactment of the Soviet decree, which is relied upon by the
29 Government herein, located within the territorial confines of the Soviet Government, but, on the contrary, were within the possession of the Superintendent of Insurance of the State of New York, and formed a part of the trust fund for deposit required in or for the Northern Insurance Company of Moscow to conduct a United States branch here, although the Government in its complaint and in the affidavit relied upon for the purpose of obtaining an injunction here was only referred to in the most general way.

17. With respect to its source of title relied upon to seize or obtain the assets with the bank, I am informed and verily believe that it will be contended, and is contended by the Government that it rests its claim upon a certain letter dated the 16th day of November, 1933, from Maxim Litvinoff, the representative of the Union of Soviet Socialist Republics, directed to Hon. Franklin D. Roosevelt, President of the United States of America, which letter, and its acknowledgment, constitute the executive agreement or treaty between our country and the Soviets. I particularly desire to call the Court's attention, as a ground for denying any injunction herein, and as indicating the very feeble basis of the Government's position, that the treaty or executive agreement between the two Governments, by its language, specifically refers to "amounts * * * that may be found to be due * * * from American nationals." An examination of the documents passing between the two Governments very clearly shows that there was no attempt to assign any amount found to be due from a Russian national.

30 18. I depose and say that the President and Directors of the Manhattan Company owes no money to the Soviet Government or any of its predecessor Governments arising out of the matters set forth in the complaint, and it is very clear from an examination of the complaint that the only reason the bank is joined as a defendant herein is because it happens to be the assignee for the benefit of creditors of the Northern Insurance Company of Moscow.

19. I have read the decree which is appended to the moving papers and which purports to liquidate the Northern Insurance Company of Moscow, and I direct the Court's attention to the fact that such decree does not by its terms confiscate or appropriate the property of the Northern Insurance Company of Moscow, but it merely directs the liquidation of such company.

20. I depose and say that the plaintiff has an adequate remedy at law, and in connection therewith, direct the Court's attention to the fact that the Government has fully recognized this fact by the institution of an action at law against the bank as assignee for the benefit of creditors of the Second Russian Insurance Company, which is a company organized under the laws of the Empire of Russia, and which was likewise admitted to do business in this State, and in connection with which it was likewise claimed

was dissolved by the Russian decrees. I therefore say that by the commencement of such action at law, as above noted and referred to, the Government has recognized and demonstrated that it
31 has an ample and adequate remedy without recourse to a Court of Equity. Furthermore, the moving papers relied upon by the Government herein utterly fail to show any equitable grounds for the issuance of an injunction or for a stay of proceedings on the part of the bank in administering this trust. The moving papers and the complaint can be examined with care and they will be found to be barren of any allegations justifying this Court to issue its mandate restraining the bank from continuing to distribute the assets acquired by it as assignee for the benefit of creditors of the Northern Insurance Company of Moscow.

21. I further depose and say that an examination of the decree annexed to the moving papers of the Government will disclose that the obvious and clear intent of the Soviets in enacting such legislation, if it thought it was seizing any assets, was to limit such seizure to those which might pass into its hands after a liquidation and a payment of all claims, and a satisfaction of all debts against the Company.

22. I am advised and verily believe and urge it as a ground for denying this injunction, that such decree of liquidation did not operate on any property without the confines of Russia and certainly not on the property now within the possesion of this bank, and therefore had no extra-territorial effect.

23. I am advised and verily believe that the Courts of this
32 State, and more particularly the Court of Appeals, in decisions which will be referred to in the brief or memorandum of law to be submitted herein on behalf of the bank, have repeatedly held that the decrees of the Soviet Government, including the one relied upon by our Government herein, are decrees of a confiscatory nature, appropriating without compensation or due process of law, the property of others, are repugnant and in derogation of the public policy of not only our State, but of our Federal Government, and therefore no force or effect has ever been given to them in any Court in this State or in any other State in this Union.

24. For the reasons herein asserted, I respectfully ask that the motion of the Government for an injunction herein be denied and the stay contained in the order of this Court, dated the 25th day of August, 1934, be vacated.

ANDREW WILSON, JR.

Sworn to before me this 31st day of August, 1934.

[SEAL] A. S. CONDIT, JR.,
*Notary Public.*

Queens Co. No. 3389, Reg. No. 7849. Cert. filed in N. Y. Co. No. 887, Reg. No. 5C562. Cert. filed in Kings Co. No. 82, Reg. No. 5387. Cert. filed in Bronx Co. No. 39, Reg. No. 146C35. Certificate filed in Richmond County. Commission expires March 30, 1935.

33 In United States District Court, Southern District of New York

[Title omitted.]

*Affidavit of Robert J. Sykes, in opposition to complainant's motion for injunction*

STATE OF NEW YORK,
*County of New York, ss:*

Robert J. Sykes, being duly sworn, deposes and says:

I am an attorney-at-law, and a member of the firm of Rumsey & Barker, solicitors for the defendant herein. I make this affidavit in opposition to the motion of the Government for an injunction pendente lite.

In the affidavit of the defendant Bank submitted herein in opposition to such application of the Government to enjoin the Bank from distributing the funds in its possession, the Court will note a frequent reference to various orders and decrees of the Supreme Court. I have annexed them hereto and they are marked respectively
34 Exhibits A, B, C, D, E, F, and G. A brief description of these orders is as follows:

Exhibit A—Order of New York Supreme Court dated April 2, 1931. This order directs the Superintendent of Insurance, pursuant to the decision of the Court of Appeals, to release the surplus assets of the Northern Insurance Company to it and its directors.

Exhibit B—Order of Appellate Division dated July 6, 1931, affirming the order referred to in Exhibit A.

Exhibit C—Order of New York Supreme Court directing the qualification of the President and Directors of the Manhattan Company as Assignee.

Exhibit D—Order of New York Supreme Court directing and authorizing defendant Bank to advertise for creditors.

Exhibit E—Order of New York Supreme Court dated the 6th day of June 1933, directing the Superintendent of Insurance to deliver, transfer and release the surplus funds of the Northern Insurance Company of Moscow to the defendant Bank as agent or depositary.

Exhibit F—Order of New York Supreme Court dated November 13, 1933. This is an order authorizing and directing the defendant Bank as agent or depositary of the Northern Insurance Company of Moscow to deliver to itself as Assignee the funds of the Northern Insurance Company.

35 Exhibit G—This is an order of the New York Supreme Court dated July 7, 1934, directing the appointment of a Referee to take and state the account of the Assignee and pass upon claims filed with it.

ROBERT J. SYKES.

Sworn to before me this 12th day of September, 1934.

ALVIN R. YOUNG,
*Notary Public.*

New York County. Clerk's No. 10, Register's No. 6Y19. Kings County Clerk's No. 57. Kings Co. Register's No. 6017. Commission expires March 30, 1936.

36 *Exhibit "A", attached to affidavit of Robert J. Sykes*

At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of New York at the County Court House in the Borough of Manhattan, City of New York, on the 2nd day of April, 1931.

Present: Hon. Philip J. McCook, Justice.

IN THE MATTER OF THE APPLICATION OF THE PEOPLE OF THE STATE OF New York, by James A. Beha, as Superintendent of Insurance of the State of New York, for an order to take possession of the property and assets of the Northern Insurance Company of Moscow.

IN THE MATTER OF THE APPLICATION OF NORTHERN INSURANCE COMpany of Moscow and sundry creditors thereof for the approval of a plan for the disposition of the surplus assets of said company.

37 An order having been duly made and entered herein by this Court on June 9, 1926, directing the Superintendent of Insurance of the State of New York to take possession of the property and conserve the assets in the United States of America of the Northern Insurance Company of Moscow and to retain such possession and conserve such assets until the further order of this Court, and said Superintendent of Insurance having taken possession of such assets pursuant to said order, and further orders dated September 7, 1929, and September 10, 1929, respectively, having thereafter been made and entered by this Court directing the disposition of the surplus assets of said Company remaining after such liquidation, and cross appeals having been duly taken to the Appellate Division, First Department, by the Superintendent of Insurance and by the Northern Insurance Company and others from said last mentioned orders, and said Appellate Division having modified and affirmed said orders and the said Northern Insurance Company of Moscow and others having thereafter appealed to the Court of Appeals from said order of modification and affirmance of the Appellate Division, and the Court of Appeals having duly heard and considered said appeal and having thereupon made an order dated February 10, 1931, reversing the said order of the Appellate Division as well as the said orders of this Court dated September

7, 1929, and September 10, 1929, respectively, and the remittitur of said Court of Appeals dated February 10, 1931, having been duly filed in the office of the Clerk of this Court on March 12, 1931, and the said Northern Insurance Company of Moscow,
38 et al., appellants, having thereupon moved for an order making the said order of the Court of Appeals the order of this Court, and said motion having duly come on to be heard on March 11, 1931.

Now, upon reading and filing the notice of said motion dated March 6, 1931, together with due proof of service thereof, and upon said remittitur dated February 10, 1931, and upon the record on appeal and upon said orders heretofore made and entered herein dated September 7, 1929, and September 10, 1929, respectively, and upon all other papers and proceedings herein, all read in support of said motion, and said motion having been submitted without oral argument and due deliberation thereon having been had, and on motion of Bonynge & Barker, attorneys for the Northern Insurance Company of Moscow et al., appellants, upon filing the opinion of the Court, it is

Ordered that said motion be and the same hereby is in all respects granted and the aforesaid remittitur of the Court of Appeals dated February 10, 1931, and filed in the office of the Clerk of this Court on March 12, 1931, is hereby made the order, judgment, and decree of this Court, and it is

Further ordered that the injunction contained in said order of June 9, 1926, be and the same hereby is vacated and set aside, and it is

39 Further ordered that the Superintendent of Insurance of the State of New York be and he hereby is authorized and directed to release, transfer, and deliver the surplus assets of the Northern Insurance Company of Moscow to Boris Schwetzoff and Nicholas Goutchkoff, as directors and conservators, and to Nicholas Andre, as Managing Director and conservator of said Northern Insurance Company of Moscow, upon their filing with the Clerk of this Court a duly approved Surety Company bond in a sum equal to the value of the assets so to be released, transferred, and delivered and in the following form:

"Know all men by these presents that Northern Insurance Company of Moscow, a Russian corporation, Boris Schwetzoff and Nicholas Goutchoff, both of Paris, France, individually and as directors and conservators of said Northern Insurance Company of Moscow, and Nicholas Andre, of Paris, France, individually and as Managing Director and conservator of said Northern Insurance Company of Moscow, all as Principals, and (insert name of Surety) Surety Company, a corporation having an office at in the City and State of New York, as Surety, are held and firmly bound unto the People of the State of New York, as Obligee, in the sum of Dollars, lawful

money of the United States, to be paid to the said People, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally firmly by these presents.

Signed, sealed, and dated this day of , 1931.

Whereas, by an order dated June 9, 1926, duly made at a Special Term of the Supreme Court of the State of New York held in and for the County of New York, the Superintendent of Insurance of the State of New York was directed to take possession of the property and conserve the assets in the United States of America of the Northern Insurance Company of Moscow and to retain such possession and conserve such assets until the further order of said Court; and

Whereas, said Superintendent of Insurance, having completed the liquidation of said Northern Insurance Company of Moscow, now has in his hands surplus assets of said Company amounting to the sum of Dollars; and

Whereas upon an appeal to the Court of Appeals from an order of the Appellate Division of the Supreme Court of the State of New York, First Department, modifying and affirming two orders dated September 7, 1929, and September 10, 1929, respectively, made and entered at a Special Term of said Supreme Court of the State of New York held in and for the County of New York, the Court of Appeals sent down its remittitur dated February 10, 1931, whereby it directed that the surplus assets of said Northern Insurance Company of Moscow be released and delivered unto the above named Boris Schwetzoff, Nicholas Goutchoff and Nicholas Andre, conditioned upon their giving a bond of the tenor hereof; and

Whereas said remittitur was duly filed in the office of the Clerk of the County of New York on the 12th day of March, 1931, and thereupon an order was duly made and entered on the 2nd day of April 1931, at a special term of the Supreme Court of the State of New York held in and for the County of New York making the aforesaid judgment and order of the Court of Appeals the judgment and order of the Supreme Court;

Now, therefore, the condition of this obligation is such that if the above bounden Boris Schwetzoff Nicholas Goutchkoff and Nicholas Andre shall faithfully apply the assets of the Northern Insurance Company of Moscow to be released and delivered to them by the Superintendent of Insurance of the State of New York to the use of said Northern Insurance Company of Moscow, its creditors and shareholders, then this obligation shall be null and void, otherwise to remain in full force and effect, and in case of breach of the condition, to be enforcible by the Northern Insurance Company of Moscow or by any creditor or shareholder thereof affected thereby.

In witness whereof, the Principals and Surety have caused this bond to be duly signed and sealed the day and year first above written.

NORTHERN INSURANCE COMPANY OF MOSCOW,
By ----------,
*Director.*
----------,
*Director.*
----------,
*Managing Director.*
---------- L. S.),
*Individually and as Director and Conservator.*
---------- L. S.),
*Individually and as Director and Conservator.*
---------- L. S.),
*Individually and as Managing Director and Conservator.*
---------- SURETY COMPANY,
(Insert name)
By ----------,
And ----------

43 and it is

Further ordered that in the event that the said Boris Schwetzoff, Nicholas Goutchkoff, and Nicholas Andre shall fail to file such bond, duly approved, with the Clerk of this Court within ninety days after the entry of this order, or in the event that they shall sooner file with the said Clerk a written statement of their inability or unwillingness to furnish such bond, then and in either of such events the said Superintendent of Insurance of the State of New York, upon the filing herein of a written stipulation signed by the Northern Insurance Company of Moscow, Boris Schwetzoff, Nicholas Goutchkoff, and Nicholas Andre, that the fund will not be withdrawn except upon the order of a Court of competent jurisdiction, is hereby authorized and directed to release, transfer, and deliver said surplus assets of the Northern Insurance Company of Moscow to the Liberty National Bank & Trust Company, of the City of New York, as agent or depositary, the same to be held by said Trust Company subject to the further order of this Court, and it is

Further ordered that any party to this proceeding and the said Boris Schwetzkoff, Nicholas Goutchkoff, and Nicholas Andre, and any creditor or stockholder of said Northern Insurance Company of Moscow, and each of them, may from time to time hereafter apply to the Court upon the foot of this order for such further order, direction, or relief as they may be advised.

Enter,

P. J. McC., J. S. C.

44 *Exhibit "B", attached to affidavit of Robert J. Sykes.*

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 6th day of July 1931.

Present: Hon. EDWARD R. FINCH,
Presiding Justice.
" EDGAR S. K. MERRELL,
" JOHN V. MCAVOY,
" FRANCIS MARTIN,
" HENRY L. SHERMAN,
Justices.

7471. Affirmance of Order

IN THE MATTER OF THE APPLICATION OF THE PEOPLE OF THE STATE OF New York, by James A. Beha, as Superintendent of Insurance of the State of New York, for an order to take possession of the property and conserve the assets for the benefit of the creditors of Northern Insurance Company of Moscow, and the interests of its policyholders, creditors, stockholders, and the public.

IN THE MATTER OF THE APPLICATION OF NORTHERN INSURANCE COMpany of Moscow and sundry creditors thereof for the approval of a plan for the disposition of the surplus assets of said Company.

45 An appeal having been taken to this Court by the superintendent of insurance of the State of New York from an order of the Supreme Court, New York County, entered on the 2nd day of April 1931, granting a motion of the Northern Insurance Company and others to make the remittitur of the Court of Appeals herein, filed on the 12th day of March 1931 the order, judgment, and decree of the Supreme Court, except so far as said order vacates the injunction in the liquidation order entered on the 9th day of June 1926 and from an order of said court, denying motion to resettle said order, entered on the 27th day of April 1931 and said appeal having been argued by Mr. James F. Donnelly, of counsel for the appellant, and by Mr. Robert J. Sykes, of counsel for Northern Insurance Company of Moscow and others, and by Messrs. Campbell and Whipp, attorneys for claimant-respondent, Michael Imchanitsky and Moscow Fire Insurance Company; and due deliberation having been had thereon,

It is hereby unanimously ordered that the order so appealed from be and the same is hereby modified to the extent of striking therefrom, as well as from the proposed bond, the name of Nicholas Andre, as one of the persons to whom the surplus assets of the Northern Insurance Company of Moscow are to be delivered, and as so modified affirmed without costs. E. R. F., *P. J.*

46 *Exhibit "C", attached to affidavit of Robert J. Sykes*

At a Special Term, Part II, of the Supreme Court of the State of New York, held in and for the County of New York at the court house thereof, in the borough of Manhattan, on the 2nd day of July 1932.

Present: Hon. John L. Walsh, Justice.

IN THE MATTER OF THE ASSIGNMENT OF NORTHERN INSURANCE Company of Moscow, assignor, to Bank of Manhattan Trust Company, assignee, for the benefit of creditors

Upon reading and filing the annexed petition of Bank of Manhattan Trust Company, the assignee herein, and it appearing to my satisfaction that the value of the assignor's estate is unknown, now, on motion of Bonynge & Barker, attorneys for the assignee, it is

Ordered that Bank of Manhattan Trust Company, the assignee herein, qualify as such assignee upon the filing of a provisional bond duly approved by one of the Justices of this Court in the sum of One thousand Dollars, for the faithful performance of its duties as such assignee.

Enter, J. L. W., *J. S. C.*

47 *Exhibit "D", attached to affidavit of Robert J. Sykes*

At a Special Term, Part II, of the Supreme Court of the State of New York, held in and for the County of New York, at the County Court House thereof, in the Borough of Manhattan, City of New York, on the 23rd day of August 1932.

Present. Hon. Samuel I. Rosenman, Justice.

IN THE MATTER OF THE ASSIGNMENT OF NORTHERN INSURANCE Company of Moscow, Assignor, to Bank of Manhattan Trust Company, Assignee for the benefit of creditors

Upon reading and filing the annexed petition of Bank of Manhattan Trust Company, Assignee for the benefit of creditors herein, duly verified the 22nd day of August 1932.

Now on motion of Bonynge & Barker, attorneys for the Assignee, it is

Ordered that Bank of Manhattan Trust Company, Assignee of said trust estate, be and it hereby is authorized and empowered to advertise by publication for creditors to present to it their
48 claims against the said Northern Insurance Company of Moscow, with vouchers duly verified, on or before a day to be specified in said advertisement or notice at least ten (10) days from said publication thereof which said advertisement or notice shall be published once in the New York Law Journal, a newspaper published in the County of New York, and hereby designated as most likely to give notice to persons to be served, and it is further

Ordered that a copy of said notice or advertisement requiring creditors to present their claims be mailed to each such creditor whose name appears on the schedules of the assignee, with postage thereon prepaid so that notice shall be received by them at least thirty (30) days before the day specified in said advertisement, with envelopes endorsed as specified in Rule 12, Subdivisions 14 and 25 of the Special Term Rules.

Enter,

S. I. R., *J. S. C.*

49 *Exhibit "E", attached to affidavit of Robert J. Sykes*

At a Special Term, Part II of the Supreme Court of the State of New York, held in and for the County of New York, at the County Court House, in the Borough of Manhattan, on the 6th day of June 1933.

Present: Hon. Phoenix Ingraham, Justice.

IN THE MATTER OF THE APPLICATION OF THE PEOPLE OF THE STATE of New York, by James A. Beha, as Superintendent of Insurance of the State of New York, for an order to take possession of the property and assets of the Northern Insurance Company of Moscow

IN THE MATTER OF THE APPLICATION OF NORTHERN INSURANCE COMPANY of Moscow and sundry creditors thereof for the approval of a plan for the disposition of the surplus assets of said Company

An order having been entered herein on the 2nd day of April 1931, on the remittitur of the decision of the Court of Ap-
50 peals (255 N. Y. 433), which order on remittitur was modified by an order of the Appellate Division of the Supreme Court, made July 6, 1931, and filed in the office of the Clerk of this Court July 8, 1931, and Boris Schwetzkoff and Nicholas Goutchkoff, the surviving directors of the Northern Insurance Company of Moscow, and the Conservators of its property, having qualified to receive the surplus funds of the Northern Insurance Company of Moscow, under the provision of the decision of the Court of Appeals herein (255 N. Y. 433); and under the provisions of the order of this Court entered herein the 2nd day of April 1931, as modified, by filing in the office of the Clerk of this Court on the 8th day of August 1931, a surety company bond duly approved by this Court, in the amount of Five hundred thousand Dollars ($500,000.00), for the faithful performance of their duties as Directors and Conservators of the Northern Insurance Company of Moscow, and of its property, and an order having been duly made and entered in the office of the Clerk of the Court of Appeals, dated the 7th day of March 1933, granting a reargument of the cause in the Court of Appeals, and an order having been duly made herein the 9th day of March 1933, directing the Clerk of this Court to return

to the Court of Appeals the remittitur heretofore filed herein for further action thereon by the Court of Appeals, and a reargument of the above entitled cause having been had on the 14th day of March 1933, and the Court of Appeals, by its decision dated the 28th day of April 1933 (262 N. Y. 1), having modified its
51 prior decision (255 N. Y. 433), and having found that Boris Schwetzoff and Nicholas Goutchkoff were unwilling to act as Conservators of such surplus funds, ordered and adjudged that the surplus funds of the Northern Insurance Company of Moscow may be turned over to the Bank of Manhattan Trust Company and that a receipt from said Bank of Manhattan Trust Company may be taken by the Superintendent of Insurance as a good and valid receipt and acquittance for such surplus funds with the same force and effect as if the Conservators had not qualified to receive the surplus funds under the prior decision of the Court of Appeals (255 N. Y. 433), and as if the said Bank of Manhattan Trust Company had been named as agent or depositary under the second provision of the order of this Court, dated the 2nd day of April 1931, as modified, to receive said funds in the event of the failure of the Directors to qualify upon the stipulation of the Northern Insurance Company of Moscow and the said Bank of Manhattan Trust Company, that said funds will not be withdrawn except upon the order of a court of competent jurisdiction, and that said Court of Appeals having otherwise ratified and confirmed its prior decision (255 N. Y. 433),

Now, upon reading and filing the remittitur of the Court of Appeals dated April 28, 1933, and the record on appeal herein, and upon the remittitur of the Court of Appeals dated February 10, 1931, and upon the order of this Court entered thereon the 2nd day of April 1931, as modified by the order of the Appellate Division of the Supreme Court, made July 6, 1931, and filed in
52 the office of the Clerk of this Court July 8, 1931, and upon the papers on the reargument of the above entitled cause in the Court of Appeals and upon the bond filed herein by the Conservators, and upon all other papers and proceedings had herein, and due deliberation thereon having been had, and on motion of Barker, Perrigo & Bonynge, attorneys for the Northern Insurance Company of Moscow, et al., appellants, it is

Ordered that said motion be and the same hereby is in all respects granted and the aforesaid remittitur of the Court of Appeals, dated April 28, 1933, is hereby made the order, judgment, and decree of this Court, and it is

Further ordered that the surety company bond of the National Surety Company heretofore filed herein by the Northern Insurance Company of Moscow by Boris Schwetzoff and Nicholas Goutchkoff, the surviving Directors of the Northern Insurance Company of Moscow, and the Conservators of its property, be and the same hereby is cancelled, and it is

Further ordered that the provisions in the order of this Court dated the 2nd day of April 1931, providing for the delivery of the surplus funds of the Northern Insurance Company to Boris Schwetzoff and Nicholas Goutchkoff under a surety company bond to be filed by them, be and the same hereby are vacated and set aside, and it is

Further ordered that the Superintendent of Insurance of
53 the State of New York, upon the filing herein of a written stipulation signed by the Northern Insurance Company of Moscow by Boris Schwetzoff and Nicholas Goutchkoff, its surviving Directors and the Conservators of its property, and by the Bank of Manhattan Trust Company, that the funds will not be withdrawn except upon the order of a court of competent jurisdiction, is hereby authorized and directed to release, transfer and deliver said surplus funds of the Northern Insurance Company of Moscow to the Bank of Manhattan Trust Company of the City of New York, as agent or depositary, the same to be held by said Trust Company subject to the order of a court of competent jurisdiction, and it is

Further ordered that the Superintendent of Insurance of the State of New York may take the receipt of the Bank of Manhattan Trust Company as agent or depositary of Northern Insurance Company of Moscow as a good and valid receipt and acquittance for the delivery of such surplus funds to said Bank of Manhattan Trust Company, and it is

Further ordered that any party to this proceeding and the said Boris Schwetzoff and Nicholas Goutchkoff and any other creditor or stockholder of said Northern Insurance Company of Moscow and each of them may from time to time hereinafter apply to the Court upon the foot of this order for such further order, direction, or relief as they may be advised.

Enter,

P. I., *J. J. C.*

54 Supreme Court of the State of New York

IN THE MATTER OF THE APPLICATION OF THE PEOPLE OF THE STATE of New York, by James A. Beha, as Superintendent of Insurance of the State of New York, for an order to take possession of the property and assets of the Northern Insurance Company of Moscow

IN THE MATTER OF THE APPLICATION OF NORTHERN INSURANCE COMpany of Moscow and sundry creditors thereof for the approval of a plan for the disposition of the surplus assets of said Company

It is hereby stipulated and agreed that the above attached order is approved as to form and that the same may be entered without further notice from any party as to the other.

Dated, New York, June 2, 1933.

BARKER, PERRIGO & BONYNGE,
*Attorneys for Northern Insurance Company, et al.*
COUDERT BROTHERS,
*Attorneys for Nicholas Andre.*
JOHN M. DOWNS,
*Attorney for Superintendent of Insurance as Liquidator.*

55 *Exhibit "F", attached to affidavit of Robert J. Sykes*

At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of New York, at the County Court House, in the Borough of Manhattan, City of New York, on the 13th day of November 1933.

Present: Hon. Albert Cohn, Justice.

IN THE MATTER OF THE ASSIGNMENT OF NORTHERN INSURANCE COMPANY of Moscow, Assignor, to President and Directors of The Manhattan Company, Successor to The Bank of Manhattan Trust Company, Assignee, for the benefit of Creditors.

An order having been entered herein on the 13th day of October 1933, upon the petition of Nicholas Goutchkoff, Boris Schwetzoff, Igor Kistiakovsky, Paul Bouryschkine, Eugene Samoiloff,
56 Cazimir Korzenicki, Nicholas Federoff, Carl O. Von Hollitscher, Low & Bonar, Ltd., A/S Forsikringszelskapet Minerva and Scandinavian Insurance Company, Ltd., creditors of the Northern Insurance Company of Moscow, verified the 10th day of October 1933, which order directed the President and Directors of the Manhattan Company, successor to The Bank of Manhattan Trust Company as agent or depositary of the Northern Insurance Company of Moscow to show cause before this Court at a Special Term, Part I thereof, on the 27th day of October 1933, why an order should not be entered herein directing the said President and Directors of the Manhattan Company, successor to the Bank of Manhattan Trust Company as agent or depositary of the Northern Insurance Company of Moscow to pay over the funds held by them of the Northern Insurance Company of Moscow to the said President and Directors of the Manhattan Company as assignee for the benefit of creditors of the Northern Insurance Company of Moscow, that the said funds may be made available for distribution among the creditors of the said Northern Insurance Company of Moscow in this proceeding pursuant to the orders of this Court, and it appearing by said petition that this Court by its order dated the 6th day of June 1933, entered upon the remittitur of the order of the Court of Appeals dated the 28th day of April 1933, in a proceeding in

this Court entitled "In the Matter of the Application of the People of the State of New York, James A. Beha, Superintendent of
57 Insurance of the State of New York, for an order to take possession of the property and conserve the assets for the benefit of creditors of the Northern Insurance Company of Moscow, Russia, and the interest of its Policyholders, Creditors, Stockholders, and the Public", directed the Superintendent of Insurance of the State of New York to release, transfer, and deliver the surplus funds of the Northern Insurance Company of Moscow to the Bank of Manhattan Trust Company as agent or depositary of the Northern Insurance Company of Moscow, the same to be held by said Trust Company subject to the order of a court of competent jurisdiction, and directed to the said Superintendent of Insurance to take the receipt of the said Trust Company as agent or depositary of the Northern Insurance Company of Moscow, as a good and valid receipt and acquittance for the delivery of such surplus funds to the said Trust Company, and it appearing that the Superintendent of Insurance has delivered the surplus funds of the Northern Insurance Company to the said Trust Company as agent or depositary.

Now, upon reading the said petition exhibits annexed and order to show cause and the notice of entry thereof, and upon filing the notice to creditors dated October 18, 1933, the affidavit of Helen L. Blain, sworn to the 28th day of October 1933 showing proof of due service thereof, and upon reading the affidavits of Charles B. Alling, sworn to the 26th day of October 1933 and of Marlon Doing, sworn to the 27th day of October 1933 and the said
58 motion having come on to be heard before this Court on the 27th day of October 1933 and due deliberation having been had, and upon filing the opinion of this court, and on motion of C. Arthur Metzer, Esq., attorney for petitioners, it is

Ordered that the President and Directors of The Manhattan Company, successor to The Bank of Manhattan Trust Company, as agent or depositary of the Northern Insurance Company of Moscow, be and they hereby are authorized and directed to release, transfer, and deliver all funds of the Northern Insurance Company of Moscow which the said President and Directors of The Manhattan Company have in their possession as agent or depositary of the Northern Insurance Company of Moscow, to the said President and Directors of The Manhattan Company, successor to The Bank of Manhattan Trust Company as assignee for the benefit of creditors of the Northern Insurance Company of Moscow.

Enter,

A. C., *J. S. C.*

59 *Exhibit "G", attached to affidavit of Robert J. Sykes*

At a Special Term, Part I of the Supreme Court of the State of New York, held in and for the County of New York, in the County Court House, in the Borough of Manhattan, City of New York, on the 7th day of July 1934.

Present: Hon. Edward B. Dore, Justice.

IN THE MATTER OF THE ASSIGNMENT OF NORTHERN INSURANCE OF Moscow, Assignor, to The President and Director of the Manhattan Company, successor to the Bank of Manhattan Trust Company, Assignee, for the benefit of creditors

The assignee, for the benefit of creditors of the Northern Insurance Company of Moscow, having made and filed an account of this proceeding in the office of the Clerk of this Court on the 11th day of June 1934 and an order having been entered therein on
60 the 11th day of June 1934 requiring the creditors interested in this proceeding to show cause before this Court on the 19th day of June 1934 why an order should not be entered herein appointing a Referee to examine the account of the assignee and the claims filed by creditors with it and to examine the stipulation annexed to the account of the assignee which said stipulation provides for the payment and disposition of creditors' claims, and due notice having been given to all persons interested in said assigned estate to attend before this Court on said date pursuant to such order.

Now upon the account filed herein on the 11th day of June 1934 the schedule and papers thereto annexed, the proofs of claims duly filed with the Clerk of this Court and the order of this Court entered thereon on the 11th day of June 1934 and the petition of the assignee verified the 25th day of May 1934 and upon reading and filing notice of filing the account of the assignee and the admissions of service of the attorneys appearing herein and the notice of objections of Paul Riaboushinsky dated the 18th day of June 1934 and said motion having come on to be heard before this Court on the 19th day of June 1934 and having been thereupon submitted by the parties and due deliberation having been had thereon and upon filing the opinion of the Court it is on motion of Barker, Perrigo, and Bonynge, attorneys for the Assignee herein,

Ordered, that the matter be referrd to John Godfrey Saxe,
61 Esq., counselor at law, of No. 1 Cedar Street, New York City, to take and state the account of the assignee and to hear any and all objections made and filed herein, and any and all further objections that may be made and filed herein and report to this court with respect thereto; and it is further

Ordered, that the said Referee shall take proof and report as to all claims of creditors filed with the assignee as to their validity and proper amounts and shall examine the stipulation annexed to the

account of the assignee and report to this court thereon; and the said referee shall have power to subpoena and examine witnesses and the parties under oath in relation to their claim and all matters connected therewith; and it is further

Ordered, that the said Referee shall take proof and report as to the persons who are entitled to share in the disposition of said estate and in what priority and proportion; and it is further

Ordered, that the said Referee take proof as to the nature and amounts of the services performed for the assignee by its attorney, Barker, Perrigo & Bonynge, and report as to the reasonable compensation to be allowed for said services; and it is further

Ordered, that the Referee take proof and report as to the
62 necessary disbursements of the assignee and of the attorneys for the assignee; and it is further

Ordered, that the assignee, the attorneys for the assignee and the clerk of this court be and they hereby are directed to turn over to said Referee all files and papers in this proceeding for his use in connection with said reference; and it is further

Ordered, that the fiduciary settlement of the account of the Assignee be held in abeyance pending the coming in of the Referee's reports; and it is further

Ordered, that the said reference proceed at the office of said Referee, and that notice of a hearing before said Referee be served upon the attorneys appearing herein at least twenty (20) days before the date specified in said notice; and it is further

Ordered, that any party to this proceeding may apply at the foot of this order for such other and further relief as may be proper and equitable.

Enter,

E. D., *J. S. C.*

68 In United States District Court, Southern District of New York

[Title omitted.]

*Affidavit of Valentin Glasberg in opposition to complainant's motion for injunction*

STATE OF NEW YORK,
*County of New York, ss:*

Valentin Glasberg, being duly sworn, deposes and says:

I reside in Paris, France. I am temporarily sojourning in the city of New York. I have read the affidavit of Edward J. Ennis, Assistant United States Attorney in and for the Southern District of New York, verified the 24th day of August 1934, upon the basis of which, together with an exhibit or exhibits which I will refer to, the Government is seeking an injunction to restrain the above named defendant from disbursing funds of the Northern Insurance Company of Moscow in its possession.

I was born in the Empire of Russia in the year 1901. I con-
64 tinuously resided in Russia from that date until 1920. I was educated in Petrograd, Russia, and I am entirely familiar with the Russian language. My knowledge and familiarity with such language is not only predicated upon my education in Russia but after my departure therefrom I have been associated with Russian nationals and officers and directors of Russian corporations in Paris for upwards of ten years.

During such association, I have repeatedly had occasion to examine and read documents in the Russian language. I have also, on hundreds of occasions, made translations therefrom which have been accepted by mercantile and banking corporations and firms as true and correct copies of translations from the Russian into the English.

My familiarity and knowledge of the English language is based upon my study of it in the schools I attended in Russia where I had special instruction for upwards of six years. After my departure from Russia I attended Oxford University in England where I spoke, read and wrote, and passed the examinations in the English language. I graduated from Oxford in 1923.

Since that time I have had occasion to read, write, and speak the English language repeatedly, not only in London, England, Paris, France, but also in the United States. I have also appeared in proceedings and actions pending in the Supreme Court of the State of New York, and have acted as an interpreter therein in the interpretation of Russian into English and English into Russian, and have been found acceptable to the attorneys for the various litigants therein.

I have examined with great care the decree in Russian which
65 is annexed to the affidavit of Mr. Ennis. I have also made a very careful examination of the English translation of this decree. I depose and say that there are two material errors contained in the translation. I will call them to the Court's attention in the order in which they appear.

In subdivision 3 of the decree, found on page 2 of the translation of the decree, it is stated as follows:

"(3) For the immediate organization of the insurance business and for the liquidation of insurance institutions which have become the property of the Russian Socialist Federated Soviet Republic, a Commission is established."

The words quoted omit to translate one word qualifying the statement, and which appears in the Russian text. The translation should read:

"(3) For the immediate organization of the insurance business and for the liquidation of *the parts of* the insurance institutions which have become the property of the Russian Socialist Federated Soviet Republic, a Commission is established."

The note in the same subdivision 3 reads in the translation:

"NOTE.—The same Commission is charged with the liquidating of private insurance organizations, all property and assets of
66 which, *disclosed at the time of their liquidation*, become the property of the Russian Socialist Federated Soviet Republic."

The italicized words do not accurately translate the Russian text. A proper and correct translation of the Russian text would be: "disclosed after their liquidation."

V. GLASBERG.

Sworn to before me this 12th day of September 1934.

ALVIN R. YOUNG,
*Notary Public.*

New York County Clerk's No. 10. New York County Register's No. 6Y19. King's County Clerk's No. 7. King's County Register's No. 6017. Commission expires March 30, 1936.

67 In United States District Court, Southern District of New York

[Title omitted.]

*Answering affidavit of Valerian E. Greaves, in support of motion for injunction*

STATE OF NEW YORK,
*County of New York*, ss.:

Valerian E. Greaves, being duly sworn, deposes and says:

1. I am a consultant on foreign law with an office at 2 Rector Street, Borough of Manhattan, City of New York.

2. I was born in the Empire of Russia in 1876 and I continuously resided there until June, 1918. I was graduated from the Imperial Law School of Russia with highest honors. Upon graduation I served two years as secretary to the Attorney General of Siberia and one year as secretary of a Committee appointed to liquidate penal deportation to Siberia. Subsequently, I joined the Bar
68 and practiced law as a notary of the Supreme Court at St. Petersburg from 1903 to 1918. I served as a member of a committee appointed to draft a new Civil Code for the Russian Empire (subsequently adopted by the Soviet Government as a basis of the Soviet Civil Codes). I served as a member of the Juridical Council of the Provisional (Kerensky) Government of Russia in 1917, which was a body consisting of nine members chosen from the Justices of the Supreme Court of Russia, professors and practicing attorneys, to advise the government on legal matters and on the constitutionality of its decrees.

3. Since 1921, I have been a consultant on foreign and international law in the City of New York. I have been continuously engaged in the study and advisory practice on matters of Soviet law. I am a member of the Committee on Foreign Law of the Bar Association of the City of New York and as such I have been specifically engaged in the examination of questions of Soviet law on which I have prepared several articles for the Bar Association. I am a member of a committee appointed by the Section of International and Comparative Law to report to the 1934 annual convention of the American Bar Association on the essential features to be included in the proposed commercial treaty of the United States with the Union of Soviet Socialist Republics and as a member of such committee have prepared several papers for the committee report. I acted as leader at a conference on Soviet Law at a meeting of the Section of International and Comparative Law at the American Bar Association.

69 4. In the course of my professional and scientific studies of Soviet Law, I have become familiar with the Soviet law concerning the nationalization of insurance and other private business enterprises and in my opinion I am able now to state the correct application of Soviet law to insurance enterprises.

5. I have examined a decree of the Council of People's Commissars "on the organization of insurance business in the Russian Republic", dated November 28, 1918, published in the "Izvestiya of the All-Russian Central Executive Committee of Soviets" (official newspaper), No. 263, on December 1, 1918, and subsequently republished in the Collection of Decrees and Orders concerning the National Economy, volume 2 pages 720, 721, a copy of which is attached to the affidavit of Edward J. Ennis in support of the order to show cause herein. The said decree is a duly enacted law of the Soviet Government and as such went into full force and effect on the date of its publication.

6. The said decree expressly proclaimed insurance in all its aspects and forms to be henceforth a State monopoly, and all private insurance companies and organizations, whether stock or mutual to be subject to immediate liquidation (with the exception of co-operative organizations engaged in mutual insurance of movable property and merchandise). The assets of all of the said private insurance companies and organizations were declared to be the property of the Soviet State by a special provision of the said decree proclaim-

70 ing that all assets of said private insurance companies outstanding upon liquidation became property of the Soviet State. It is my opinion, based on the express text of the said decree and my knowledge of the Soviet legal terminology that the said decree declared all assets of the private insurance organizations which were subject to liquidation to be the property of the Soviet State. The expression in the Russian text of the said decree "vse imustchestva", equivalent to the English expression "all properties", comprises all assets without exception regardless of what they

may consist and where they may be located, and extends to all tangible things outside of Soviet territory and choses in action including those against foreign debtors.

7. Neither the said decree, nor any other law, decree, instruction, interpretation or other enactment of the Soviet Government contains any provision indicating that the Soviet Government originally intended to exclude or subsequently excluded from the operation of the said decree any assets of private insurance concerns referred to in the said decree including assets outside of Soviet territory.

VALERIAN E. GREAVES.

Sworn to before me this 24th day of September 1934.

ARMAND CHANKALIAN,
*Notary Public.*

New York Co. Clerk's No. 367, Reg. No. 5C463. Commission expires March 30, 1936.

71 In United States District Court, Southern District of New York

(Title omitted.)

*Answering affidavit of Edward J. Ennis, in support of motion for injunction*

STATE OF NEW YORK,
*County of New York, Southern District of New York, ss.:*

Edward J. Ennis, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney for the Southern District of New York in charge of the above entitled matter.

2. I have read the affidavit of Valentin Glasberg, verified the 12th day of September 1934, offered in opposition to the motion of the complainant for a temporary injunction herein in which it is stated that the translation of the decree of Russian State on the organization of the insurance business in the Russian
72 Republic annexed to my affidavit of August 24, 1934, in support of the order to show cause herein, is incorrect in two respects, in that paragraph 3 of the said translation omits to translate one word in the original text meaning "parts of", and in that the note in paragraph 3 incorrectly translates one word in the original decree to be "at the time of" instead of "after."

3. I have called this matter to the attention of the Department of State and I attach hereto a certified copy of the decree and of a corrected translation of said decree and a photostatic copy of a letter received therewith stating that the words "parts of" were inadvertently omitted in the typing of the certified translation previously transmitted, an exact and correct copy of which was annexed to my affidavit of August 24, 1934. The corrected transla-

tion does not alter the translation of "at the time of" in order to read "after."

EDWARD J. ENNIS.

Sworn to before me this 24 day of September 1934.

ARMAND CHANKALIAN,
*Notary Public.*

New York Co. Clerk's No. 367, Reg. No. 1C463. Commission expires March 30, 1935.

73 *Exhibit A attached to answering affidavit of Edward J. Ennis.*

Address Official Communications to
THE SECRETARY OF STATE
Washington, D. C.

DEPARTMENT OF STATE,
*Washington, September 19, 1934.*

In reply refer to
EE

MY DEAR MR. ATTORNEY GENERAL: Referring to my letter of August 20, 1934, transmitting a certified copy and translation of a decree of the Soviet of People's Commissars "on the organization of the insurance business in the Russian Republic", I am now enclosing additional copies of the same documents, namely, certified photostatic copies of the title page and of pages 720 and 721 of a Russian-language publication entitled "Collection of Decrees and Orders on National Economy (October 25, 1918–March 15, 1919) Volume two" published at Moscow in 1920 by the Supreme Soviet of National Economy of the Russian Socialist Federated Soviet Republic, a copy of which is in the possession of the Department of State, and a certified translation made by Mr. I. Jawney, a translator in the employ of the Department of State, of those portions of pages 720 and 721 which contain thte text of the above-mentioned decree.

74 The Honorable HOMER S. CUMMINGS,
*Attorney General.*

In this connection, I wish to invite your attention to the fact that the words "parts of", which appeared between the words "of" and "insurance" in line two, page two, in the draft translation, were inadvertently omitted in the typing of the certified translation, as previously transmitted. These words have been inserted in their proper place in the text of the certified translation enclosed herewith.

Sincerely yours,

R. WALTON MOORE,
*Assistant Secretary.*

Enclosures:
Certified photostatic sheets;
Certified translation.

75 *Exhibit B—Certified copy of Russian text of a decree of the Russian State on the organization of the insurance business in the Russian Republic attached to answering affidavit*

Certified Translation of Exhibit B, Attached to Answering Affidavit

Source: Collection of decrees and orders on national economy (October 25, 1918—March 15, 1919) volume two. Published by the Supreme Soviet of National Economy of the Russian Socialist Federated Soviet Republic, Moscow, 1920. Pages 720, 721.

Decree of the Soviet of People's Commissars 603. On the organization of the insurance business in the Russian Republic.

(1) Insurance in all its forms, such as fire insurance, insurance on shipments, life insurance, accident insurance, hail insurance, livestock insurance, insurance against failure of crops, etc., is hereby proclaimed as a State monopoly.

NOTE.—Mutual insurance of movable goods and merchandise by the cooperative organizations is conducted on a special basis.

(2) All private insurance companies and organizations (stock and share holding, also mutual) upon issuance of this decree
76 are subject to liquidation; former rural * (People's Soviet) and municipal mutual insurance organizations operating within the boundaries of the Russian Republic are hereby proclaimed the property of the Russian Socialist Federated Soviet Republic.

(3) For the immediate organization of the insurance business and for the liquidation of parts of insurance institutions, which have become the property of the Russian Socialist Federated Soviet Republic, a commission is established under the Supreme Soviet of National Economy, consisting of representatives of the Supreme Soviet of National Economy, the People's Commissariats of Commerce and Industry, Interior Affairs, the Commissar of Insurance and Fire Preventional, Finances, Labor, and State Control, and of Soviet Insurance Organizations (People's Soviet and Municipal Mutual).

NOTE.—The same commission is charged with the liquidating of private insurance organizations, all property and assets of which, disclosed at the time of their liquidation, become the property of the Russian Socialist Federated Soviet Republic.

(4) The above-mentioned reorganization and liquidation of existing insurance organizations and institutions shall be accomplished not later than the first day of April 1919.

(5) The Commissariat of Insurance and Fire Prevention,
77 together with all its institutions, is reorganized into the Insurance Department of the Supreme Soviet of National Economy. The matter of fire prevention is transferred to the Supreme Soviet of National Economy.

* zemskie.

(6) No Soviet properties and enterprises are subject to insurance.

(7) Life insurance with the State Savings Banks is conducted upon the former basis.

(8) The present decree comes into force on the day of its publication.

(Signed) Chairman of the Soviet of People's Commissars
V. ULYANOV (Lenin).
Administrator of Affairs of the Soviet of People's Commissars
V. BONCH-BRUEVICH.

("IZVESTIYA of the All-Russian Central Executive Committee of Soviets", December 1, 1918, No. 263)

[Translator's Note.] I hereby certify that the above translation is conformable with the attached original to the best of my knowledge.

Ignatius, Jawney,
IGNATIUS JAWNEY,
*Principal Translator,*
*Department of State.*

Appointed Translator, January 1928.
Russian.
Tr. IJ:MW:SS

78 In United States District Court, Southern District of New York

[Title omitted.]

*Affidavit of William G. Welliaminoff in opposition to complainant's motion for injunction*

STATE OF NEW YORK,
*County of New York, ss:*

William G. Welliaminoff, being duly sworn, deposes and says:

I was born in Moscow, Russia, in the year 1899 and I continuously resided in Russia until October 1918. I was educated in Moscow, Russia, and I am a graduate of a high school and college in Moscow and of the Law School of the Imperial University of Moscow.

I am entirely familiar with the Russian language. Since 1918, the time when I left Russia, I had occasion to constantly use the Russian language. I came to the United States in 1923 and become an American citizen in 1928. Since 1923 I have been a per-
79 manent resident of the City of New York. In 1927 I enlisted as a student in the New York University Law School (Washington Square Branch) and graduated from said school in 1930.

For the last ten years in New York I have repeatedly had occasion to examine and read documents in the Russian language. I have also on numerous occasions made translations of various Rus-

sian documents, decrees, laws, and decisions of Russian Courts which have been accepted by numerous law firms in New York City and used by them at various trials. I have also on numerous occasions interpreted in court and before Referees the testimony given by expert witnesses on the Russian law.

My familiarity and knowledge of the English language is based upon my study of it in the schools I attended in Russia and upon my constant use of said language for the last ten years:

At the request of Mr. Sykes of Rumsey & Barker, 52 Wall Street, New York City, I have carefully examined the Russian text of the Decree of the Soviet of People's Commissars published on December 1, 1918, "on the organization of the insurance business in the Russian Empire" and the translation of said Decree attached to the affidavit of Edward J. Ennis, Assistant United States Attorney in and for the Southern District of New York verified the 24th day of August 1934, which was given to me by said Mr. Sykes. I so examined the Russian text of said Decree in the New York Public Library on 42nd Street and Fifth Avenue, where I found a complete original collection of the Soviet Decrees published in the
80 "Collection of Enactments and Decrees of the Workers' and Peasants' Government."

I depose and say that I find two material errors contained in the translation of the Decree of December 1, 1918, attached to the affidavit of Mr. Ennis.

In Subsection 3 of the Decree (page 2 of the translation) it is stated as follows:

"For the immediate organization of the insurance business and for the liquidation of insurance institutions which have become the property of the Russian Socialistic Federated Soviet Republic a commission is established."

The words quoted omit to translate one word qualifying the statement which appears in the Russian text, namely, the words "the parts of the" which should be inserted after the word "of" and before the word "insurance" in the second line of the translation as it appears above. The first sentence of an accurate and true translation of Subsection 3 should read:

"For the purpose of immediate organization of the insurance business and for the liquidation of *the parts of the insurance* institutions which have become the property of the Russian Socialistic Federated Soviet Republic a commission is established."

The note to the same Subsection 3 reads in the translation annexed to the affidavit of Mr. Ennis as follows:

81 "The same commission is charged with the liquidation of private insurance organizations and all property and assets *disclosed at the time of their liquidation* became the property of the Russian Socialistic Federated Soviet Republic."

The italicized words do not repfesent an accurate translation of the Russian text. A proper and correct translation of the Russian text should read as follows:

"Said committee shall also be charged with the liquidation of private insurance organizations; their entire property *which shall remain after their liquidation*, shall become the property of the Russian Socialistic Federated Soviet Republic."

WILLIAM G. WELLIAMINOFF.

Sworn to before me this 2nd day of October, 1934.

ALVIN R. YOUNG,
*Notary Public.*

New York County Clerk's No. 10. New York County Register's No. 6Y19. Kings County Clerk's No. 7. Kings Co. Register's No. 6017. Commission expires March 30, 1936.

82 In United States District Court, Southern District of New York

[Title omitted.]

*Second affidavit of William G. Welliaminoff, in opposition to complainant's motion for injunction*

STATE OF NEW YORK,
*County of New York*, ss.:

William G. Welliaminoff, being duly sworn, deposes and says:

I was born in Moscow, Russia, in the year 1899 and I continuously resided in Russia until October, 1918. I was educated in Moscow, Russia, and I am a graduate of a high school and college in Moscow and of the Law School of the Imperial University of Moscow.

I am entirely familiar with the Russian language. Since 1918, the time when I left Russia, I had occasion to constantly use the Russian language. I came to the United States in 1923 and became an
83 American citizen in 1928. Since 1923 I have been a permanent resident of the City of New York. In 1927 I enlisted as a student in the New York University Law School (Washington Square Branch) and graduated from said school in 1930.

For the last ten years in New York I have repeatedly had occasion to examine and read documents in the Russian language. I have also on numerous occasions made translations of various Russian documents, decrees, laws, and decisions of Russian courts which have been accepted by numerous law firms in New York City and used by them at various trials. I have also on numerous occasions interpreted in court and before Referees the testimony given by expert witnesses on the Russian law.

My familiarity and knowledge of the English language is based upon my study of it in the schools I attended in Russia and upon my constant use of said language for the last ten years.

At the request of Mr. Sykes of Rumsey & Barker, 52 Wall Street, New York City, I have carefully examined the Russian text of circular of the Commissariat of Justice No. 194 dated September 26, 1923, published in the Messenger of Soviet Justice No. 38 for the year 1923. I have so examined said text in the New York Public

Library on 42nd Street and Fifth Avenue, where I found on file a copy of the original publication above referred to.

I have also examined a translation of said circular submitted to me by said Mr. Sykes.

A copy of said translation, together with a photostat copy
84 of the original Russian text, is hereto attached. (The photostatic copy of the Russian text was at my request prepared by the Photostatic Division of the New York Library.)

I find that the English translation hereto attached of the circular above referred to is a true, accurate, and correct translation of the Russian original.

WILLIAM G. WELLIAMINOFF.

Sworn to before me this 2nd day of October 1934.

WM. H. BRUDER,
*Notary Public.*

Bronx County No. 137. Certificate filed in New York County No. 467. Bronx County Register's No. 88B35. New York County Register's No. 55272. Commission expires March 30, 1935.

85 *Exhibit A—Russian text of Circular of Commissariat of Justice No. 194, dated September 26, 1923, attached to affidavit of Welliaminoff in opposition.*

Translation of Exhibit A

Circular of the Commissariat for Justice. No. 194 Dated 26th September, 1923. (Published in Messenger of Soviet Justice 1923 No. 38.)

TO ALL THE DEPARTMENTAL TRIBUNALS (Notaries' Section):

On the inadmissibility to refuse to execute and certify agreements, assignments, and other instruments concerning the assignment of proprietary rights abroad.

In view of the doubt which arises on the spot (throughout the country) on the question of the right of free disposal of documents proving rights to proprietary rights belonging to citizens of the R. S. F. S. R. outside the R. S. F. S. R. and in particular to all policies issued by foreign insurance companies, the People's Commissariat for Justice states:

Proprietary rights of citizens of the R. S. F. S. R. enforcible outside the R. S. F. S. R. are governed by the laws of the country
86 where they are to be enforced; to prevent the free disposal of such rights would result in an unlawful enrichment of the foreign debtors and individuals under obligations and in a loss to Russian citizens.

Consequently, Russian citizens have the entire and free disposal of such rights and in particular the right to assign them in any manner recognized by the Civil Code of the R. S. F. S. R. both to

citizens of the R. S. F. S. R. or to foreigners, inasmuch as such assignment is not forbidden by some special decree

In accordance with what has just been set out the Notaries' Offices must not refuse to execute and certify agreements, assignments, and other instruments concerning the assignment of proprietary rights abroad among other policies of foreign insurance companies.

People's Commissar for Justice

KRILENKO

Member of the Board of the People's Commissariat for Justice

BRANDENBURGSKY

26th September, 1923.

87 In United States District Court, Southern District of New York

[Title omitted.]

*Third affidavit of William G. Welliaminoff, in opposition to complainant's motion for injunction*

STATE OF NEW YORK,
*County of New York*, ss:

William G. Welliaminoff, being duly sworn, deposes and says:

I was born in Moscow, Russia, in the year 1899 and I continuously resided in Russia until October 1918. I was educated in Moscow, Russia, and I am a graduate of a high school and college in Moscow and of the Law School of the Imperial University of Moscow.

I am entirely familiar with the Russian language. Since 1918, the time when I left Russia, I had occasion to constantly use the Russian language. I came to the United States in 1923 and
88 became an American citizen in 1928. Since 1923 I have been a permanent resident of the City of New York. In 1917 I enlisted as a student in the New York University Law School (Washington Square Branch) and graduated from said school in 1930.

For the last ten years in New York I have repeatedly had occasion to examine and read documents in the Russian language. I have also on numerous occasions made translations of various Russian documents, decrees, laws, and decision of Russian Courts which have been accepted by numerous law firms in New York City and used by them at various trials. I have also on numerous occasions interpreted in court and before referees the testimony given by expert witnesses on the Russian law.

My familiarity and knowledge of the English language is based upon my study of it in the schools I attended in Russia and upon my constant use of said language for the last ten years.

At the request of Mr. Sykes of Rumsey & Barker, 52 Wall Street, New York City, I have carefully examined the Russian text of circular of the People's Commissariat for Foreign Affairs addressed to the Plenipotentiary Representatives of the R. S. F. S. R. abroad bearing number 42 and dated April 12, 1922, published in the Messenger of the People's Commissariat for Foreign Affairs No. 6 for the year 1922. I have so examined said text in the New York Public Library on 42nd Street and Fifth Avenue, where I found on file a copy of the original publication above referred to.

89 I have also examined a translation of said circular submitted to me by said Mr. Sykes.

A copy of said translation, together with a photostat copy of the original Russian text is hereto attached. (The photostatic copy of the Russian text was at my request prepared by the Photostatic Division of the New York Public Library.)

I find that the English translation hereto attached of the circular above referred to is a true, accurate, and correct translation of the Russian original.

WILLIAM G. WELLIAMINOFF.

Sworn to before me this 2nd day of October, 1934.

WM. H. DRUDER,
*Notary Public.*

Bronx County No. 137. Certificate filed in New York County No. 467. Bronx County Register's No. 88835. New York County Register's No. 5B272. Commission expires March 30, 1935.

90 *Exhibit A—Russian text of Circular of People's Commissariat for Foreign Affairs No. 42, dated April 12, 1922, attached to affidavit of William G. Welliaminoff.*

Translation of Exhibit A

Circular of the People's Commissariat for Foreign Affairs to the Plenipotentiary Representatives of the R. S. F. S. R. abroad, No. 42, dated 12th, April, 1922 (See: "Messenger of the People's Commissariat for Foreign Affairs", 1922, No. 6).

In the practice of the foreign agencies of the People's Commissariat for Foreign Affairs there arises the question of whether such organs are entitled to assume the protection of Russian citizens in the exercise by them of such proprietary rights as belong to them by virtue of the Law of the country wherein they reside which, on the basis of the Law in force in R. S. F. S. R., would not be recognized here, such as, for instance, the right to own real estate.

The People's Commissariat for Foreign Affairs explains that the Law of each country establishing some definite system of Law of Property is valid only within the territorial limits of that country, but that within the boundaries of such territory such Law applies to legal relations pertaining to property irrespective of the na-

tionality of the persons who may be entitled to such rights. The Law on Property established by the decrees of the Russian Soviet Government does, therefore, determine only such legal rela-
91 tions pertaining to property rights as arise on the territory of the R. S. F. S. R. Legal relations pertaining to property rights whereof the subject-matter is situated outside the territory of the R. S. F. S. R. and is not connected with such territory cannot be governed outside the territory of the R. S. F. S. R. by Russian Law and are—irrespective of the nationality of the persons entitled to such rights, be they even Russian Citizens—subject to the effects of local Law.

Thus, when a certain legal concept is generally recognized by the local law, the fact that our own law does not recognize the same cannot, of itself, prevent our plenipotentiary representatives and consulates from protecting such rights as a matter of general protection of the lawful interests of Russian citizens.

Such is the general rule. However, the extent of protection of such rights is limited by the general principles and legal concepts of the Soviet State. Claims and actions, though they may be lawful according to the Laws of the country where one resides, may be directly opposed to the ideas prevailing in the R. S. F. S. R. as to the extent to which such rights may be enforced; such claims and actions should not be furthered by the Soviet representatives. Such instances shall be separately examined in each individual case.

Please acknowledge receipt of the present circular.

Acting People's Commissar
KARAKHAN.

Acting Director of the Economic and Legal Department,
ZALKIND.

92 In United States District Court, Southern District of New York

E. 78-377

UNITED STATES OF AMERICA, COMPLAINANT

AGAINST

BANK OF NEW YORK AND TRUST COMPANY, DEFENDANT

E. 78-383

UNITED STATES OF AMERICA, COMPLAINANT

AGAINST

PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY, SUCCESSOR to The Bank of Manhattan Trust Company, defendant

Appearances

Martin Conboy, U. S. Attorney, Solicitor for the Plaintiff in both cases (Martin Conboy, Francis H. Horan, Edward J. Ennis, and Paul A. Sweeney, Esqs., of Counsel).

Messrs. Emmet, Marvin & Martin, Solicitors for Defendant Bank of New York and Trust Company (Frederick B. Campbell, Paul C. Whipp, and Lounsbury D. Bates, Esqs., of Counsel).

93 Messrs. Rumsey & Barker, Solicitors for Defendant President and Directors of The Manhattan Company (Wendell P. Barker, Robert J. Syykes and W. C. Morris, Esqs., of Counsel).

Messrs. Charles B. Alling, Hartwell Cabell, Coudert Brothers, John M. Downes, Engelhard, Pollak, Pitcher, Stern & Clarke, Borris M. Komar, Rosenberg, Goldmark & Colin and Samson Selig, representing various interests, filed briefs *amici curiae* in opposition to the motions of the Government and in support of the motions of the defendants to dismiss.

*Opinion filed Nov. 30, 1934*

COXE, *D. J.*:

In these suits the United States seeks to establish title to the remaining New York assets of Moscow Fire Insurance Company and Northern Insurance Company, two Russian insurance corporations which were dissolved in 1918 by decrees of the Soviet Government. These Companies formerly maintained branches in this country, and upwards of eight years ago the New York assets of both companies were taken over by the New York Superintendent of Insurance in liquidation proceedings under the New York statute.

The Superintendent's liquidation was completed prior to 1933, and in that year the remaining assets of the Moscow Company were turned over, under a State court order, to the defendant Bank of New York and Trust Company "as agent or depositary" of the Moscow Company, subject to withdrawal only on the "order

94 of a Court of competent jurisdiction." The same disposition was made of the remaining assets of the Northern Company, except that the depositary in that case was the Bank of Manhattan Trust Company, predecessor of the defendant President and Directors of The Manhattan Company.

The Northern Company had previously made an assignment for the benefit of creditors to the defendant President and Directors of The Manhattan Company, under the New York statute, and, by a later order of the State court, the transfer of the assets of the Northern Company to that Company, as assignee, was authorized and approved.

The funds of the two companies are now held by the defendant Banks, awaiting distribution among the persons entitled to share in the funds, respectively.

Recently, proceedings were started in the State courts, on notice to all parties interested, to secure distribution of the two funds, and these proceedings have proceeded in the case of the Moscow Company to judgment, and, in the case of the Northern Company, to a consideration of the claims presented.

The complaints in the two suits are substantially alike, and allege that the funds of the two Companies, now held by the defendant

Banks, were "confiscated and appropriated" by the "Russian State" in 1918, and that title to both funds was assigned to the United States by the "Russian State" on November 16, 1933. The prayer for relief in each case is for an accounting and a direction to turn over the fund to the United States.

95 The present motions are by the Government in each case for an injunction pendente lite, restraining distribution of the fund; and by the defendant in each case for a dismissal of the complaint for insufficiency.

The principal contentions urged by the defendants in support of the motions to dismiss are (1) that our courts will not enforce the Soviet decrees of confiscation over property located here, and which has always been located here; and (2) that no title or interest in or to the funds of the two Companies now held by the defendant Banks has been or could be assigned or transferred to the United States by the Soviet Government.

The legislation of any nation has no extraterritorial force as a matter of right. Rose v. Himely, 4 Cranch, 241; The Apollon, 9 Wheat. 362; Hilton v. Guyot, 159 U. S. 113; Second Russian Ins. Co. v. Miller, 297 Fed. 404, affd. 268 U. S. 552. The extent to which such legislation will be recognized by other nations depends on comity. The Bank of Augusta v. Earle, 13 Peters, 519, 589; Second Russian Ins. Co. v. Miller (supra). Comity is "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." Hilton v. Guyot, 159 U. S. 113, 164.

The courts of this country will not, however, enforce the laws of foreign nations which are contrary to our own public policy;

96 The Bank of Augusta v. Earle (supra); Russian Reinsurance Co. v. Stoddard, 240 N. Y. 149; Vladikavkazsky Ry. Co. v. N. Y. Trust, 263 N. Y. 369; and the public policy of the United States is to be determined "from the Constitution and the laws, and the course of administration and decision"; License Tax Cases, 5 Wall 462, 469; "not by the varying opinions of laymen, lawyers, "or judges as to the demands of the interests of the public." Hartford Fire Ins. Co. v. Chicago, 70 Fed. 201, 202.

The confiscatory decrees of the Soviet Government were clearly opposed to the public policy of the United States. Russian Volunteer Fleet v. U. S., 282 U. S. 481, 491, 492; Petrogradsky M. K. Bank Co. v. National City Bank, 253 N. Y. 23; Vladikavkazsky Ry. Co. v. N. Y. Trust, 263 N. Y. 369; Baglin v. Cusenier, 221 U. S. 580. They were utterly ineffective to reach the properties of the Moscow and Northern Companies in this country; Vladikavkazsky Ry. Co. v. N. Y. Trust (supra); Baglin v. Cusenier (supra); The Jupiter, 96 L. I. P. 62 (1927); Employees Liability v. Sedgwick, 1927, A. C. 95; and the subsequent recognition of the Soviet Government in no

way changed the confiscatory nature of the decrees in so far as these particular funds were concerned. Lehigh Valley v. State of Russia; 21 Fed. (2) 396, 401; Vladikavkazsky Ry. Co. v. N. Y. Trust (supra).

It is insisted on behalf of the United States that the Soviet Government became the "liquidator" of the assets of the two dissolved Russian insurance companies, and that a liquidator's title
97 will be accorded recognition in our courts. The difficulty with this contention is that the complaints allege specifically that the properties of the two companies were "confiscated and appropriated" by the Soviet Government. However, it is perfectly clear that the liquidation of a corporation implies winding up and distribution of the assets among the creditors and stockholders; Lafayette Trust Co. v. Beggs, 213 N. Y. 280, 283; Matter of Silkman, 121 A. D. 202; and it is nowhere suggested that the two funds in question were assigned to the United States for any such limited purpose as counsel intimates.

I am satisfied, also, that no assignment or transfer of the two funds was ever made to the United States by the Soviet Government. The instrument relied on to support the alleged assignment is the letter of Mr. Litvinoff, People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics, to the President of the United States, dated Nov. 16, 1933, reading as follows:

"MY DEAR MR. PRESIDENT":

"Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist
98 Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment."

"The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claim with respect to:

"(a) judgments rendered or that may be rendered by American courts insofar as they relate to property, or rights, or interest therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

"(b) acts done or settlements made by or with the Government of the United States or public officials in the United States, or
99 its nationals relating to property, credits or obligations of any Government of Russia or nationals thereof."

"I am, my dear Mr. President,
Very sincerely yours,

MAXIM LITVINOFF,
*People's Commisar for Foreign Affairs,*
*Union of Soviet Socialist Republics.*

"Mr. FRANKLIN D. ROOSEVELT,
*President of the United States of America,*
*The White House.*"

Under the express terms of this letter, the assignment to the United States was of "the amounts admitted to be due or that may be found due it (i. e. the Soviet Government) as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, * * *."

The funds held by the defendant banks for the Moscow and Northern Companies were in no sense due the Soviet Government from "American nationals." They belonged to the two dissolved insurance companies, which were given juristic standing in the New York courts by repeated decisions of the Court of Appeals. Petrogradsky M. K. Bank v. National City Bank, 253 N. Y. 23; Matter of People (Russian Reinsurance Co.), 255 N. Y. 415; Matter of People (Northern Ins. Co.), 255 N. Y. 433. Moreover, the defendant banks were merely custodians of the respective funds,
100 pursuant to orders of the State courts; and now the defendant Bank of New York and Trust Company holds the fund of the Moscow Company only "as agent or depositary" of that company; and in the case of the Northern Company the defendant president and directors of the Manhattan Company is acting as assignee for the benefit of creditors under the New York statute. With respect to neither fund is there any relation of debtor and creditor insofar as the defendant banks are concerned. The letter plainly refers only to such funds as were involved in State of Russia v. National City Bank, 69 Fed. (2) 44, where an American bank was the debtor of the Russian Government for the latter's funds held on deposit; it has no application whatever to the present funds now in the hands of the defendant banks merely as custodians. This is particularly emphasized by the inclusion in the letter of the claim of the Russian Volunteer Fleet, which was before the Supreme Court in Russian Volunteer Fleet v. U. S., 282 U. S. 481; for if it had been intended to transfer to the United States claims against dissolved Russian insurance companies for the recovery of New York assets, concerning which there had at the time been extensive litigation in the New York courts, it is at least reasonable to suppose that specific reference would have been made to them.

The suggestion of the Government that the Litvinoff assignment is not open to judicial construction requires little comment, for clearly where private rights are concerned, the mere assertion of the Government that suits should be commenced does not pre-
101 clude the courts from determining as a judicial matter the true meaning of the instrument involved. There is nothing in State of Russia v. National City Bank, 69 Fed. (2) 44, holding to the contrary; and the statement on page 48 of the opinion that "Our courts must accept the assertion of the government of the United States as to the effect of an assignment", when applied to the particular facts of the case, mean nothing more than that the authority of Mr. Litvinoff to make the assignment, and the right of the United States to accept it, will not be questioned by our courts. The word "effect" as used in this excerpt from the opinion, was not intended to preclude judicial interpretation of the language of the instrument itself.

I hold, therefore, that the two funds in the hands of the defendant Banks were not in any way affected by the Soviet decrees of confiscation, and that the United States has not acquired title to either fund; and with this disposition of the principal issues in the two cases, it seems unnecessary to consider the other points raised by counsel.

The motion of the defendant in each case to dismiss the complaint for insufficiency is granted; and the motions of the United States for injunctions pendente lite are denied. November 28, 1934.

ALFRED C. COXE,
*United States District Judge.*

102 In United States District Court, Southern New York

Present: Honorable Alfred C. Coxe, United States District Judge.

In Equity. No. 78-383

UNITED STATES OF AMERICA, COMPLAINANT,

AGAINST

PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY, SUCCESSOR to The Bank of Manhattan Trust Company, Defendant.

*Order and Decree, Dec. 20, 1934*

The complainant, on August 25, 1934, having filed its bill of complaint herein, verified August 24, 1934, and complainant having moved, by order to show cause dated August 25, 1934, upon the aforesaid bill of complaint, and upon the affidavit of Edward J. Ennis, verified August 24, 1934, and the papers thereto attached, for an injunction pendente lite restraining the defendant from distrib-

uting any part of the funds alleged in the bill of complaint to be in the possession of the defendant; and complainant in support of its motion for an injunction pendente lite having filed and
103 served affidavits of Valerian E. Greaves and Edward J. Ennis, both verified September 24, 1934, and the documents thereto annexed; and defendant, in opposition to complainant's motion for an injunction pendente lite having filed with the Court the following enumerated documents, namely, affidavit of Andrew Wilson, verified August 31, 1934; the affidavit of Robert J. Sykes, verified September 12, 1934, and Exhibits "A" to "G" inclusive thereto attached; the affidavit of Valentin Glasberg, verified September 12, 1934; the three affidavits of William G. Welliaminoff, all verified October 2, 1934, and the documents thereto attached;

And the cause having come on to be heard on the 4th and 6th days of October, 1934;

And the defendant having orally moved for an order dismissing the bill of complaint on the ground that said complaint fails to state facts sufficient to constitute a cause of action;

Now, upon reading the papers filed herein as above recited, and after hearing Martin Conboy, Esq., United States District Attorney for the Southern District of New York, on behalf of the complainant, United States of America, in support of the bill of complaint and of the motion for an injunction pendente lite; and Wendell P. Barker and Robert J. Sykes, Esqs., on behalf of the defendant, in support of the motion to dismiss the bill of complaint and in opposition to complainant's motion for an injunction pendente lite; and due deliberation having been had, and the Court on November 30, 1934, having rendered and filed its opinion dated November 28, 1934;

104 And upon the motion of Rumsey & Barker, solicitors for the defendant, it is

Ordered, adjudged, and decreed that the defendant's motion to dismiss the bill of complaint for insufficiency be and hereby is granted, and the motion of the complainant for an injunction pendente lite be and hereby is denied, and that the bill of complaint be and hereby is dismissed.

And, complainant having applied for a suspension, pending appeal, of the order and decree, and defendant having consented to such suspension upon the terms hereinafter specified, it is further

Ordered that the operation of this order and decree be and is hereby suspended until the coming down and the filing in this Court of the mandate of the United States Circuit Court of Appeals upon an appeal by complainant to such court, upon the conditions hereinafter specified, namely:

(a) that the petition and allowance of appeal, the assignment of errors and the citation be filed and served within two (2) days from the date hereof;

(b) that the printed transcript of the record shall be made, filed, and served by the complainant within ten (10) days from the date hereof.

(c) that complainant will apply to the United States Circuit Court of Appeals for the hearing of such appeal upon a date as
105 near the commencement of the January 1935 Term (January 7, 1935) of said Court as may be possible; and

(d) that complainant's brief on appeal will be served upon defendant's solicitors ten (10) days prior to the date so set for argument of such appeal.

ALFRED C. COXE, *U. S. D. J.*

Filed 12/20/34.

In United States District Court, Southern District of New York

[Title omitted.]

*Petition and allowance of appeal*

The complainant, United States of America, by Martin Conboy, United States Attorney for the Southern District of New York, considering itself aggrieved by the order and decree in the above-entitled cause, dated December 20, 1934, and filed December
106 20, 1934, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Second Circuit for the reasons specified in the Assignment of Errors filed herewith and prays that this appeal be allowed, that a citation be issued, directed to the above named defendant commanding it to appear before the United States Circuit Court of Appeals for the Second Circuit to do and receive what may be just in the premises, and that a transcript of the record, proceedings, and papers upon which the said decree and order were made, duly authenticated, be sent to the United States Circuit Court of Appeals for the Second Circuit.

MARTIN CONBOY,
*United States Attorney for the*
*Southern District of New York,*
*Solicitor for Complainant,*

Office & P. O. Address: U. S. Courts & P. O. Bldg., Borough of Manhattan, City of New York.

Ordered that the appeal prayed for by the complainant, United States of America, be and hereby is allowed.

Dated, New York, N. Y., December 22nd, 1934.

ALFRED C. COXE, *U. S. D. J.*

107 In United States District Court, Southern District of New York

[Title omitted.]

*Assignment of errors*

Now comes the complainant, United States of America, and files the following assignment of errors upon which it will rely on its appeal from the order and decree in the above entitled cause made and entered on December 20, 1934:

1. The Court erred in granting the motion of the defendant to dismiss the bill of complaint for failure to state facts sufficient to constitute a cause of action.

2. The Court erred in granting the motion of the defendant to dismiss the bill of complaint for insufficiency.

3. The Court erred in denying the motion of the complainant for an injunction pendente lite.

4. The Court erred in holding that the assignment from the
108 Union of Soviet Socialist Republics to the complainant, dated November 16, 1933, did not transfer to the complainant all of the right, title and interest of the Northern Insurance Company of Moscow and all the right, title and interest of all of its stockholders in all of the property of the Northern Insurance Company of Moscow in the United States, including the cash, securities and other assets held by the defendant.

5. The Court erred in holding that the decree of the Russian State nationalizing the Northern Insurance Company of Moscow and appropriating all of its property in the United States, including the cash, securities and other assets held by the defendant, are opposed to the public policy of the United States.

6. The Court erred in holding that the decrees of the Russian State nationalizing the Northern Insurance Company of Moscow were ineffectual to reach the properties of the Northern Insurance Company of Moscow in the United States.

7. The Court erred in holding that recognition of the Soviet Government by the United States did not change the confiscatory nature of the decrees of the Russian State nationalizing the Northern Insurance Company of Moscow and appropriating all of its property in the United States including the cash, securities and other assets held by the defendant.

8. The Court erred in holding that the decrees of the Rus-
109 sian State did not appropriate and transfer to the Russian State all of the right, title and interest of the Northern Insurance Company of Moscow and all of the right, title and interest of all of its stockholders in all of the property of the Northern Insurance Company of Moscow in the United States including the cash, securities and other assets held by the defendant.

9. The Court erred in holding that by the decrees of the Russian State the said Russian State did not become the liquidator of all of the assets of the Northern Insurance Company of Moscow, including the cash, securities, and other assets held by the defendant.

Wherefore, complainant prays that the said order and decree, made and entered December 20, 1934, be reversed and that the said

Court may be directed to grant the complainant's motion for an injunction pendente lite as prayed for in the bill of complaint.

Dated, New York, N. Y., December 22, 1934.

MARTIN CONBOY,
*United States Attorney for the*
*Southern District of New York,*
*Solicitor for Complainant.*

Office & P. O. Address: U. S. Courts & P. O. Bldg., Borough of Manhattan, City of New York.

110 [Citation in usual form omitted in printing.]

111 In United States District Court, Southern District of New York

[Title omitted.]

*Stipulation as to record*

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, January 18, 1935.

MARTIN CONBOY,
*U. S. Attorney,*
*Attorney for Complainant-Appellant.*

WENDELL P. BARKER,
*Attorney for Defendant-Appellee.*

112 [Clerk's certificate to foregoing transcript omitted in printing.]

# UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

*against*

PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY, SUCCESSORS to Manhattan Bank Trust Company, defendant-appellee

Before MANTON, AUGUSTUS N. HAND, and CHASE, Circuit Judges

In equity. Appeal from a decree of the District Court for the Southern District of New York dismissing the bill of complaint. Affirmed.

Martin Conboy, United States attorney for complainant-appellant; Francis H. Horan, Edward J. Ennis, assistant United States attorneys.

Sherman & Sterling, solicitors for the National City Bank of New York; Joseph M. Proskauer, Philip A. Carroll, Otey McClellan, J. Alvin Van Bergh, of counsel.

Wendell P. Barker, solicitor for the defendant president and directors of The Manhattan Company; Wendell P. Barker, Robert J. Sykes, William C. Morris, of counsel.

Graham, McMahon, Buell & Knox, amicus curiae pro se and in behalf of creditors of the Northern Insurance Company of Moscow; Edward Ward McMahon, William H. Hall, of counsel.

PER CURIAM.

Affirmed on the authority of *United States* v. *Bank of New York and Trust Company* handed down herewith.

United States Circuit Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

*against*

BANK OF NEW YORK AND TRUST COMPANY, DEFENDANT-APPELLEE

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

*against*

PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY, SUCCESSORS to the Bank of Manhattan Trust Company, defendant-appellee

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

*against*

GEORGE S. VAN SCHAICK, SUPERINTENDENT OF INSURANCE OF THE State of New York, Liquidator of the Domesticated United States Branch of the First Russian Insurance Company, Established in 1817, defendant-appellee.

MANTON, Circuit Judge, dissenting.

The complaints in these actions ask for accountings seeking to recover balances held by Russian insurance corporations, Moscow Fire Insurance Company of Moscow, Russia; The First Russian Insurance Company, and Northern Insurance Company of Moscow, Russia, held by the respective banks, appellees, as depositories. Each insurance company had its principal offices in Russia.

In Bank of New York and Trust Company case, the complaint alleges that in 1917 and 1920 decrees of the Russian State dissolved the Moscow Fire Insurance Company, that all of its right, title, and interest and all the right, title, and interest of the stockholders in its property, including deposits made with the Superintendent of Insurance of the State of New York, was confiscated and appropriated by the Russian State. It alleges that, on April 18, 1933, the claims of domestic creditors to the fund deposited with the Superintendent of Insurance of New York had been satisfied and that he, pursuant to an order of the Supreme Court of New York, directed that the fund be released and paid, and the balance transferred and delivered to the agent or depository of the Moscow Insurance Company, not to be withdrawn except upon an order of a court of competent jurisdiction; that the appellee received and had cash securities amounting to $1,180,399.54. It set forth an assignment on November 16, 1933, by the Russian State to the appellant for valuable consideration, of all the right, title, and interest in and to the cash and securities constituting the balance of the deposit and also that the appellant by assignment had all the right, title, and interest of all Russian nationals in and to this cash and securities, and that it was the sole and exclusive owner entitled to immediate possession. It alleges a demand of and refusal by appellee to deliver this property to appellant and the wrongful withholding thereof.

In the *Van Schaick* case, the complaint pleaded that the First Russian Insurance Company had been dissolved by decree of the Russian State and its property, including its deposit with this superintendent of insurance of New York had been confiscated and appropriated by the Russian State. It alleges that on August 8, 1925, by order of the New York State Supreme Court, the superintendent of insurance took possession of the property of the domestic United States branch of that insurance company (established 1907) under section 63 of the insurance law of the State. That all domestic claims had been adjudicated and allowed, leaving undisposed of certain foreign claims which arose in the conduct of the business

outside of the United States; that two claimants residing in the city of New York had been allowed $128,010.58 and $38,403.17 each, respectively, by an order of the State supreme court on February 26, 1934. That on appeal to the appellate division of the supreme court of the State, this award was affirmed (June 15, 1934) but that an appeal was taken to the Court of Appeals of the State of New York and is undisposed of. An assignment of the balance of $1,170,783.36, as of November 16, 1933, is pleaded.

In the case of president and directors of the Manhattan Company, it is pleaded that the Northern Insurance Company of Moscow is a Russian corporation with a branch in New York, and that it made a deposit with the superintendent of insurance of New York to comply with the requirements of the insurance law. That it too had been dissolved back in 1917 and 1918, and its property confiscated by the Russian State. That the superintendent of insurance took possession August 3, 1933; the claims of domestic creditors as to this fund, deposited with the superintendent of insurance, were satisfied pursuant to an order of the State supreme court and directed that the funds be released, paid and transferred to the agent or depository of the Northern Insurance Company of Moscow, said funds to be withdrawn upon order of a court of competent jurisdiction. The amount here involved was $332,994.15 held by the appellee. It is alleged that this too was assigned on November 16, 1933. Demands were made for the payment of these moneys pursuant to this assignment and refused.

In each case a restraining order against disposition pending the trial of a suit was denied and on motion supported by affidavits, each of the complaints was dismissed.

The United States claims title to these balances and asks for an accounting by virtue of two assignments executed by agents of the Russian Government—the Ughet and Litvinov assignments, the first executed prior to and the second since recognition. The questions presented are: (1) does the claim of the Government to the balance named in the hands of the appellees come within the terms of the so-called "Litvinov assignment"; and (2) assuming it does, what is the effect of a political recognition of the Union of Soviet Socialist Republics, and should such recognition be retroactive and extraterritorial in its effect?

As to the first question: on the 16th of November 1933, Litvinov, the People's Commisar for Foreign Affairs of the Soviet Union, executed in his official capacity, an assignment which was a part of the general scheme of recognition of the Soviet Union by the terms of which it assigned to the Government of the United States,

"the amounts admitted to be due or that may be found to be due it (the Soviet Government), as the successor of prior governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, * * *."

Questions as to this assignment must be resolved according to the maxims and principles of the Law of Nations (*Henfield's Case*, 11 Fed. Cas., p. 1089, 1101), which require that a formal engagement between two nations—whether such engagement be in the form of a treaty or of an executive agreement—should be construed as liberally and untechnically as the exigencies of the case may demand in order to effectually carry out the evident or probable design of the parties in executing it. *Ware* v. *Hilton*, 3 Dall. 299; *The Amiable Isabella*, 6 Wheat. 71; *United States* v. *Arredondo*, 6 Pet. 691; *Geofroy* v. *Riggs*, 133 U. S. 267; *Wright* v. *Henkel*, 190 U. S. 40; *Rocca* v. *Thompson*, 223 U. S. 317.

"Such solemn international instruments between independent sovereignties as public treaties, intended primarily for the common advancement of their individual interests, the interests of civilization, and the promotion of international amity, are not to be read as rigidly as documents between private persons governed by a system of technical law, but, so far as it can be done without the sacrifice of individual rights or those principles of personal liberty which lie at the foundation of our jurisprudence, should be construed in the light of that larger reason, that broader, fairer and more liberal sense calculated to perpetuate that international concord which constitutes the spirit of the law of nations." (Puente, International Law, p. 228.)

The ultimate design of the two countries in executing this assignment was to transfer "the claims and counterclaims between the Governments of the Union of Soviet Socialist Republics and the United States of America, and the claims of their nationals", to the broad plane of diplomacy, and by placing those claims beyond the reach of vexatious judicial action, to facilitate at one stroke, the adjustment of the delicate points at issue between the two countries. No narrow or strained construction of that instrument is permissible under these circumstances. The funds at issue are admitted to be the balances of the assets of Russian corporations with branch offices here affected by the Soviet decrees whose local business was liquidated by the courts of the State of New York. Matter of *Moscow Fire Ins. Co.*, 255 N. Y. 433. If it be sound, as the appellant contends, that the effect of the Soviet decrees is to vest in the Soviet government complete title to those funds, and to give that government a cause of action to recover them, then, on that hypothesis, we would be bound to hold that the funds in the safe keeping of appellee—an "American national"—are such as "may be found to be due" the Soviet Government within the terms of the assignment; that is, which "ought to be paid" by appellee, or which "may be demanded" by the assignor. 1 Bouvier, Law Dictionary, 3rd Ed. by Rawle, 946; *Ransom* v. *Bidwell*, 89 Conn. 137. The fact that by the terms of the assignment the Soviet Government has renounced its right to sue American nationals who may be indebted to it, is a circumstance strongly urging upon us the broadest possible interpretation of the terms of the assignment. If, however, the effect of the Soviet de-

cree is not such as to vest title to the funds in the Soviet Government, then there would be no question that the funds would not fall within the terms of the assignment and the claims of the appellant must fail. Whether or not the funds here involved are included in the terms of the assignment depend upon the juristic effect of the political act of recognition, and on the degree of extraterritorial force which international comity—the *comitas gentium*—ordains that we should give to Soviet legislation of this character.

The conduct of the international relations of the nation is a matter of state (The Regdai, 278 Fed. 294) which the Constitution has properly placed in the hands of the executive and legislative—that is, the "political" departments of the national government, and the property of whatever may be done in the exercise of this political power is not subject to judicial review or inquiry. *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, 302; *Terrazas* v. *Donohue*, 227 S. W. 206 (Court of Civil Appeals, Tex.). No doctrine of public law is more firmly established than this: that it belongs exclusively to the department constitutionally in charge of the external affairs of the nation to recognize or decline to recognize a new government in an old state or a new state carved out of an old one (*Rome* v. *Himely*, 4 Cranch, 272; *Gelston* v. *Hoyt*, 3 Wheat. 246; *Kennett* v. *Chambers*, 14 How. 38; *Selnicki* v. *Phila. Natl. Bank*, 273 Pa. 110) and to determine, in case of recognition, who is the *de jure* or *de facto* sovereign in such country. *Jones* v. *United States*, 137 U. S. 202; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Agency of Canadian Car & Foundry Co.* v. *American Car Agency*, 258 Fed. 363 (C. C. A. 2). That determination, when made by the political department of the government, concludes our courts on the legal status of such sovereign or government, *Ricaud* v. *Amer. Metal Co.*, 246 U. S. 304; *Jones* v. *U. S.*, 137 U. S. 202, 212; *Republic of Peru* v. *Peruvian Guano Co.*, 36 Ch. Div. (1887) 489.

Recognition is adequately defined as the act by which a state, which is already a member of the community of nations, signifies that it accepts another state as a juristic person of international law, with all the rights and obligations which the law establishes. *A. M. Luther* v. *James Sagor & Co.*, (1921) 3 K. B. Div. 549. While recognition is not necessary to enable a state to maintain its internal sovereignty (*McIlvaine* v. *Coxe's Lessee*, 4 Cranch 209, 212; *Wulfsohn* v. *Russian S. F. S. Republics*, 234 N. Y. 372; *Salimoff & Co.* v. *Standard Oil Co.*, 262 N. Y. 220, 225, 227; Wheaton's International Law, Lawrence's Ed. p. 36), the authorities are nevertheless in accord that it is ordinarily indispensible to make the state's external sovereignty effective, or, to express it differently, to enable the state to become a juristic person of international law. *United States* v. *Hutchings*, 2 Wheeler Cr. Cas. 543, Fed. Cas. No. 15,429; Holland, Lectures on International Law, Walker's Ed., 1933, p. 91; 1 Oppenheim, International Law, 4th ed. 1928, § 71 p. 143; 1 Louter, Le Droit International Public Positif [1920], p. 218; Visscher, Les Gouvernements etrangers en Justice, Revue de Droit International, Ser. III [1922],

v. 3, p. 149; Ullmann, Trattato di Diritto Internazionale Pubblico, tr. by Buzzati, 1914, § 30, p. 184. Recognition clothes a *de facto* state with an international status (*Salimoff & Co.* v. *Standard Oil Co.*, 282 N. Y. 220, 227) and confirms the self-existence of such state (Zeffter, Le Droit International de l'Europe, Bergson's trans. [1883] p. 61). It implies a formal engagement to respect the rights and powers of sovereignty in the new state and to accept its form of government as adequate to express its rational and normal will.

"In recognizing the state, we consequently recognize its legislative capacity; we accept its legislation, both statutory and consuetudinary, as defining the laws of its national existence sufficiently for international purposes." (1 Lorimer, The Institutes of the Law of Nations [1883] 325.)

Recognition, moreover, clothes the state recognized with international capacity to enter into diplomatic relations and to conclude treaties (1 Oppenheim, op. cit., § 75*d*, p. 15, and accepts the validity and efficacy of the acts of the recognized state—be those acts executive, legislative or judicial—and it impresses upon them a retroactive effect from the commencement of the existence of such state or government. Thus, the Supreme Court has said in *Oetjen* v. *Central Leather Co.* (246 U. S. 297, 303), that "recognition is retroactive in effect and validates all the actions and conduct of the government so recognized from the commencement of its existence." In *Underhill* v. *Hernandez* (168 U. S. 250, 253), the Court said:

"If the party seeking to dislodge the existing government succeeds, and the independence of the government it has set up is recognized, then the acts of such government from the commencement of its existence are regarded as those of an independent nation."

The same principle has been accepted by tribunals of respectable authority in other countries. In England, the House of Lords in *Lazard Bros. & Co.* v. *Midland Bank, Ltd.* [1933] A. C. 289, decided that—

"The effect of such recognition is retroactive and dated back to the original establishment of Soviet rule which was in the 1917 October Revolution, as was held by the Court of Appeal in Aksionairnoye Obschestve *A. M. Luther* v. *James Sagor & Co.*"

In France, the *Civil Tribunal of the Department of the Seine in De Mayenne* c. *Jeutel*, 55 Clunet, 710 [1926] held that—

"the effect of the *de jure* recognition of the Union of the Soviet Socialist Republics, except as it attempts to take away vested rights, is retroactive and goes back to the day of the commencement of the juridical existence of the new government."

Protected by the retroactive effect of recognition are also legislative (*Murray* v. *Vanderbilt*, 39 Barb. 140, 146) and executive (*Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Monte Blance Real Estate Corp.* v. *Wolvin Line*, 145 La. 563, 85 So. 242) acts of confiscation.

We must take judicial notice of the recognition of the Soviet Government by our Government on November 16, 1933 (*Jones* v. *United States*, 137 U. S. 202; *Underhill* v. *Hernandez*, 168 U. S.

250; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Ricaud* v. *Amer. Metal Co.*, 246 U. S. 304; *City of Berne* v. *Bank of England*, 9 Ves. 347, 32 Repr. 636; *Mighell* v. *Sultan of Jehore* [1894], 1 Q. B. Div. 149, 158, 161, A. C.; *Duff Development Co.* v. *Govt. of Kelantan* [1924], A. C. 797, H. of Lords), and applying the foregoing principles to the state of facts before us, we are bound by the determination of our political department regarding the international legal status of the Soviet Government; that recognition having been accorded, we must accept the Soviet Government as a legitimate governmental authority in Russia, and its institutions and laws as adequate expressions of the national will to meet the requirements of international law; that the effect of the recognition of that Government is to retroact upon and validate for international purposes, all the acts, whether legislative, executive or judicial, of that Government, including the decrees by which the property and assets of the respective insurance companies were affected from October 1917, when that Government came into power.

But, as each nation can legislate only for itself (The Antelope, 10 Wheat. 66, 122), to hold, as we must, that the recognition of the Soviet Government is retroactive and that its actions are validated, in our judgment, does not answer the question on which these cases necessarily revolve, namely, whether the legislation of the Soviet Government, as it affects these insurance companies, should be recognized and applied by our courts so as to vest in the Soviet Government title to the assets of the corporations located here and thus enable that Government to assign such title to the United States as it purports to do. That question is not free from intrinsic difficulties, and the studied views of those who have considered and written on the subject, and the *obiter dicta* of the courts as they have had occasion to comment on it, are far from being in agreement. Realizing that for the first time, perhaps, in the judicial history of this country the courts have been called upon by a foreign power, with whom we are now in relations of amity, to give extraterritorial effect with respect to property located here, to its admittedly confiscatory legislation, requires that we approach the subject with caution. That the legislation of each State is local in character and has no force *proprio vigore*, beyond its jurisdiction, is a principle flowing from and in entire harmony with the dominent conceptions of political science in every land. In the case of *The Apollon* (8 Wheat. 362, 370) [1824], Mr. Justice Story said:

"The laws of no nation can justly extend beyond its own territory, except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation, within its own jurisdiction. And, however general and comprehensive the phrases used in our municipal laws may be, they must always be restricted in construction, to places and persons upon whom the legislature have authority and jurisdiction."

This general principle has been followed down to the present time without any material variation. *Canada Southern R. Co.* v. *Geb-*

*hard*, 109 U. S. 527, 536; *Huntington* v. *Attrill*, 146 U. S. 659, 689; *Hilton* v. *Guyot*, 159 U. S. 113, 163; *Second Russian Ins. Co.* v. *Miller*, 297 Fed. 404 (C. C. A. 2). It is also accepted in the English courts (*Sedgwick Collins & Co.* v. *Russian Ins. Co.* [1925] 1 K. B. Div. 1, 15). The principle is given even a more rigorous application with respect to foreign laws or judgments which are contrary to morals, to public policy, or prejudicial to local interest (*Bank of Augusta* v. *Earle*, 13 Pet. 519, 589; *Vladikavkazsky Ry. Co.* v. *N. Y. Trust Co.*, 263 N. Y. 369, 378), or are of a penal character (*Baglin* v. *Cusenier*, 221 U. S. 580; *Huntington* v. *Attrill*, 146 U. S. 657, 667; Wharton, A Treatise on the Conflict of Laws, 2d Ed. [1881] § 4).

But, within the sphere of sovereignty enacting it, that legislation is effective to regulate fully the status of all persons and things therein, and to determine the juristic effect of every act or relationship done or established under it. To the full force of this principle, the respective insurance companies had to yield their unqualified assent. They came into being under the laws of an imperial sovereign; they lived many years under the imperium of those laws; and in 1918 a new sovereign power, the legitimacy of which has been explicitly accepted by our Government, cut short their lives; it took over their corpus—their properties and assets. Such was the fate of these corporations in territories subject to Russian jurisdiction. As to the fate of the branches of these corporations here, the problem is not simple, for there the acts of the Russian Government may clash with local conceptions of private international law or policy.

That the continuity and conditions of juristic personality depend on the pleasure of the legislator who creates it may safely be admitted. 9 Holdsworth, A History of English Law [1926], p. 48.

In *Canada Southern R. Co.* v. *Gebhard* (109 U. S. 527, 537), the Supreme Court said:

"Whatever disabilities are placed upon the corporation at home it retains abroad, and whatever legislative control it is subjected to at home must be recognized and submitted to by those who deal with it elsewhere. A corporation of one country may be excluded from business in another country (*Paul* v. *Virginia*, 8 Wall. 168), but, it admitted, it must, in the absence of legislation equivalent to make it a corporation of the latter country, be taken, both by the government and those who deal with it, as a creature of the law of its own country, and subject to all the legislative control and direction that may be properly exercised over it at the place of its creation."

And there is no reason why the suppression of a juristic person by the legislative act of a sovereign which created it, should be regarded by the courts of other countries as contrary to their public policy. The fortune that betakes a corporation under the law which created and controlled it, betakes in like measure the branch offices both at home and abroad. The reason for this is that a branch office is nothing more, in the eyes of the law, than a prolongation of the life of the foreign corporation, without independent juristic exist-

ence of its own. This is the posture taken on repeated occasions with regard to the branch offices of these extinct Russian corporations, by the courts of Poland (*Affaire de Julien Muszkat* c. *Soc. d'Assur. Rossia* [1929], Supt. Ct., 58 Clunet, 770, 771); France (*Banque generale pour de Commerce etranger* c. *Jaudon* [1924], Trib. civ. Seine, 52 Clunet, 419, 420; *Cie. Nord de Moscou* c. *Phenix Espagnol* [1928] Cour d'Appel, Paris, 56 Clunet, 119, 130; *Soc. Vairon et Cie.* c. *Banque de Commerce de Siberie* [1928] Sirey, Rec. Gen., Jour. du Pal., 161, Cour d'Appel, Bordeaux); and Switzerland (*Banque internazionale de Commerce de Petrograd S. A.* [*Succursale de Geneve*] c. *Hausner* [1924], Trib. Federal, 52 Clunet 488). It is also the position taken by the British courts in *Banque Internationale de Commerce de Petrograd* v. *Goukassow* [1923], 2 K. B. 682, C. A., Scrutton, L. J. And in *Lazard Bros. & Co.* v. *Midland Bank, Ltd.* [1933], A. C. 289, Lord Wright said:

"English courts have long since recognized as juristic persons corporations established by foreign law in virtue of the fact of their creation and continuance under and by that law. Such recognition is said to be by the comity of nations. * * * But as the creation depends on the act of the sovereign state which created them, the annulment of the act of creation by the same power will involve the dissolution and nonexistence of the corporation in the eyes of English law. The will of the sovereign authority which created it can also destroy it. English law will equally recognize the one, as the other, fact."

The same rule was recognized in *Russian Reinsurance Co.* v. *Stoddard, Jr., Supt. of Ins.*, 240 N. Y. 149, 154. But the Court of Appeals of New York, in recent cases, seems to have adopted what may be called the organic theory of juristic personality in opposition to the fictional theory which to this day has held a predominant position in the field of legal philosophy and judicial history and is the theory of our own law. Thus in *Petrogradsky M. K. Bank* v. *National City Bank* (253 N. Y. 23, 28 [1930]), the court said:

"We think the plaintiff is not dissolved, but is still a juristic person with capacity to sue."

In *Severnoe Securities Corp.* v. *London & Lancashire Ins. Co. Ltd.* (255 N. Y. 120, 122 [1931]), a Russian corporation, whose juristic personality was in dispute, was declared to retain "a pallid life as the shade or little more of its former self." In Matter of People (Russian Reinsurance Co.) (255 N. Y. 415, 425 [1931]), the Russian corporations were declared to be "still juristic persons." In *Salimoff & Co.* v. *Standard Oil Co.* (262 N. Y. 220, 225 [1933]) in speaking of Russian banking and insurance corporations, the court observed that

"* * * corporations nonexistent in Soviet Russia have been, like fugitive ghosts endowed with extraterritorial immortality, recognized as existing outside its boundaries. The juristic person, the Russian corporation, dead in the country which created it, has received juridical vivification elsewhere."

This reasoning in the cases referred to coming before the Court of Appeals prior to the recognition of the Soviet Government, might have some theoretical justification, on the ground, possibly, of the technical continuity of the ancient Russian regime (*Rome* v. *Mimely*, 4 Cranch, 272; *Gelston* v. *Hoyt*, 3 Wheat. 246; *Re Ambros Light*, 25 Fed. 412) and the presumed illegality of the new (*Salimoff & Co.* v. *Standard Oil Co.*, 262 N. Y. 220, 224), a view, however, which has not passed unchallenged by high authority (*Banque Internationale de Commerce de Petrograd S. A.* [*succursale de Geneve*] c. *Hausner* [1924], Trib. Federal, Switzerland, 52 Clunet, 488). But that the logic of these cases should be extended, as is pretended (*Vladekavkazsky Ry. Co.* v. *N. Y. Trust Co.*, 263 N. Y. 369, 378), to acts whose legality we have tacitly approved when we recognized the government under whose authority they were done, is clearly a breach of the comity which one nation owes another. So singularly frail is the foundation of such reasoning when applied after an act e. g. recognition—which necessarily must alter the judicial application of legal thories, the New York Court of Appeals stands alone on this proposition. In this holding, it goes against the current of authority, and controlling principles of public international law which nations in relation to mutual friendliness must observe toward each other. Considering the matter as a question of fact—i. e., failure of proof of extinction—and not of legal theory, as the New York courts have done, the House of Lords of England held in 1925 that banking corporations were not dissolved by Russian nationalization decrees of December 14, 1917 (*Russian Commercial & Industrial Bank* v. *Compitor d'Escopte de Mulhouse* [1925] A. C. 112, 134, L. H.; *Banque International de Commerce de Petrograd* v. *Goukassow* [1925] A. C. 150 H. L.).

Passing from the imponderables of juristic theory—corporate personality—to its ponderables—corporate assets—we invoke, in a truer and broader sense, the application of principles of public and private international law which must be made to coexist and to cooperate toward the adoption of a policy of substantial justice.

A practical result of the political sovereignty of each country is the right of each to change its political institutions at discretion, and to legislate concerning its own interests according to its convenience and needs. See Webster, Jan. 12, 1852; *King of Prussia* v. *Kuepper's Admr.*, 22 Mo. 550 [1856]; *Dougherty* v. *Equitable Life Assurance Society*, 266 N. Y. 71, 83.

Thus, in the exercise of the right accorded to every State by the most widely accepted of all the principles of the law of nations, the Soviet Government nationalized the business of insurance in which these companies were engaged, and confiscated their property. No doubt exists that the operation of the laws of a foreign state often transcend, and necessarily so, their territorial orbit of action. What gives them force in other jurisdictions is the comity between nations which calls on the representatives of each sovereign state to observe a mutual respect in considering the effects of such of

their official acts as project themselves into a foreign jurisdiction. *Bank of Augusta* v. *Earle*, 13 Pet. 519, 589; *Second Russian Ins. Co.* v. *Miller*, 297 Fed. 404, 409 (C. C. A. 2); *Hilton* v. *Guyet*, 159 U. S. 113, 163; *Sedgwick Collins & Co.* v. *Rossia Ins. Co.* [1926] 1 K. B. 1, 17, C. A. And, as a general rule, the acts of the recognized government when invoked by litigants in the forum of a freindly nation, will not be permitted to be impeached. "Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory." *Underhill* v. *Hernandez*, 168 U. S. 250, 252. The reason, of course, is that to permit the validity of those acts to be reexamined and perhaps condemned by the courts of another would very certainly imperil the amicable relations between governments and vex the peace of nations. *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, 304.

Two possible grounds exist for refusing to give the Soviet decree extraterritorial application. One is public policy; the other is its penal character—assuming it is penal. The conception embodying the idea of public policy is wrapped in considerable vagueness as is generally admittel. *Hadden* v. *Barney*, 5 Wall. 107; *Egerton* v. *Brownlow*, 4 H. L. Cas. 1, 123. The view expressed concerning public policy by these, the highest tribunals of England and the United States, warn against the danger of taking uncertain and unsatisfactory concepts as the deciding yardstick according to which the legislation of the recognized Government of Russia is to be accepted or rejected in our courts. Considerations of an international character urge us to accept with great reluctance, a local conception of public policy as the determining factor in the relations between friendly nations. Is the confiscatory legislation of a recognized government, which produces effects only within its own jurisdiction, and respecting its own nationals or foreigners, per se, against public policy? Certainly not. Speaking of the confiscatory legislation of the State of Georgia in 1782, which expropriated the property of British loyalists, and particularly that of Wright, the provincial governor, during our Revolutionary period, the Lord Chancellor of England, as far back as 1788, said in *Wright* v. *Nutt* (1 H. Blackstone, 136, 149, 126 Repr. 83, 89):

"It may be a question for private speculation, whether such a law made in Georgia was a wise or an improvident one, whether a barbarous or civilized institution. But here we must take it as the law of an indepe[illegible]ent country, and the laws of every country must be equally regarded in courts of justice here, whether in private speculation they are wise or foolish."

This original principle has been accepted without question in subsequent adjudications involving our own nationals and nationals of the country putting such legislation into effect. *Underhill* v. *Hernandez*, 168 U. S. 250; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Murray* v. *Vanderbilt*, 39 Barb. 140, 146.

Is such legislation against public policy if it seeks extraterritorial application? Gratuitous expressions in the courts of New York, England and France, give the impression that they would hold—if the occasion arose—that any infringement of the right of private property, which operates upon property situated in those jurisdictions, would be against their public policy.

But in close analysis, it will be found that many of these expressions were unnecessary to the decision of the actual question before the courts and they do not apply to the specific problem before us. The cases there referred to concern the protection of rights acquired locally, such as the payment of debts, the enforcement of contracts, and the right of succession under the local law, all of which come properly under the operation of well established principles of private international law. On the other hand, there is much authority in the decisions to the effect that there is nothing in the confiscatory legislation of a recognized government which can be against the public policy of the recognizant state, even when the legislation of the former is judged exclusively according to the local conceptions of the latter rather than by general standards. While there is a divergence of opinion on the question whether the Soviet decrees of nationalization are contrary to public policy, it is well to bear in mind the admonition of the Supreme Court in *Hedden* v. *Berney*, *supra*, against the practice of permitting judicial tribunals to decide according to their unchecked discretion what should be the public policy of a nation, particularly on a question of international concern. The known practice of the executive department of the nation pronouncing the public policy of the nation should be controlling upon the courts in such instances.

The public policy of the country may be declared in the Constitution. and if that instrument is silent the three departments of the Government have the power within their respective spheres to declare what the public policy is: the executive, by proclamation or some other authoritative act; the legislative, by statute; the judiciary by judicial decisions. The Chief Executive, acting as the constitutional organ of international relations, may declare, in the course of the administration of the affairs of the Nation, its public policy with respect to any question within his legitimate competency. The act of recognition of a foreign government may import the equivalent of a definite declaration of policy which the courts would be bound to notice. Should we for any reason disapprove of the policies of a foreign government which seeks our recognition, we would be within our rights in declining to recognize it on that ground solely. In *A. M. Luther* v. *James Sager & Co.* [1921] (3 K. B. 532), it appears that the Soviet Government had been extended *de facto* recognition by the British Government. It was contended that the confiscatory decrees of that Government were in their nature "so immoral and so contrary to the principles of justice" as recognized in England that the courts should disregard them, Lord Scrutton saying:

"Should there be any government which appropriates other people's property without compensation, the remedy appears to be to refuse to recognize it as a sovereign state. Then the courts could investigate the title without infringing the comity of nations. But it is impossible to recognize a government and yet claim to exercise jurisdiction over its person or property against its will."

While we have said that recognition is retroactive and that its effect is to preclude the tribunals of the recognizant state from questioning the validity or legality of the actions of the government recognized, and that it invalidates, so far as concerns the tribunals of the recognizant state, transfers of property and other transactions which before recognition would have been treated as invalid by those tribunals (1 Oppenheim, International Law, 4th Ed. [1928] §75d, p. 155; Harvey, The Legal Effects of Recognition in International Law [1928] 82, 87), an important qualification of this general principle must be formulated, and that is, that as in the interregnum between the establishment of a foreign government in power and its recognition by this Government, it cannot be said to be entitled to any comity and its legislation to any respect (*Rose* v. *Himely*, 4 Cranch, 272; *Gelston* v. *Hoyt*, 3 Wheat, 246) at our hands during such period whatever has been done in the courts, with legal finality, must be regarded as *res judicata* and valid as against the world. So that in establishing a new policy or changing an old one, the act of recognition must be understood to have effect only from the date it actually takes place as to questions which are *res judicata* and irrevocable, but as to questions which are still pending or not affected with litigation, or which are political in nature, the effect must be understood as from the commencement of such government. Therefore, during the interregnum, the corporations were correctly regarded here (because of the refusal of our courts on grounds of public policy to give effect to the Soviet legislation), as a juristic person, and as such subject to the application of the principles of private international law, the most frequently invoked in these Russian cases having been the *lex rei situs* and the *lex loci contractus*. *Salinoff & Co.* v. *Standard Oil Co.* 262 N. Y. 220; *Sedgwick Collins & Co.* v. *Rossia Ins. Co.* [1926] 1 K. B. 1; In re *Russian Bank for Foreign Trade* [1933] Chancery 745; *Egger* v. *La Baloise-Vie* [1924] Triv. civ. Seine, 52 Clunet, 1006.

In any litigation between private individuals putting in opposition the laws of respective countries the conflict must be resolved according to the rules of private international law. The principle which during such interregnum applied to the branch offices of these corporations in this country, was clearly formulated in the Treaty on International Commercial Law of Montevideo [1889] (art. 6) as follows:

"The branches or agencies established in a State by a corporation domiciled in another, shall be considered as domiciled in the place where they do business and subject to the jurisdiction of the local authorities regarding the business which they may do."

Under this qualification of the general principle of the retroactivity of the act of recognition, the rights which the Soviet Government acquired here with respect to these companies and their assets under the decree of nationalization must date only from the date of actual recognition—that is, November 16, 1933; but as to what occurred before, the rights of the Soviet Government must be understood as subordinate to and regulated by the principles of private international law to the extent which those principles govern the rights of our nationals or inhabitants acquired under our laws in the course of business with the companies prior to actual recognition. Anything adjudicated by our courts subsequent to the date of actual recognition must, therefore, be treated as void.

When, therefore, the Soviet Government was recognized, the courts lost all right to continue to inject their prerecognition conceptions of public policy into the international panorama in manifest derogation of the express determination of the political department and the clear juridical implications of the act of recognition. As said by Lord Scrutton, L. J. in *A. M. Luther* v. *James Sagor & Co. supra:*

"But it appears a serious breach of international comity, if a state is recognized as a sovereign independent state, to postulate that its legislation is 'contrary to essential principles of justice and morality.' Such an allegation might well with a susceptible foreign government become a casus belli; and should in my view be the action of the Sovereign through his ministers, and not of the judges in reference to a state which their Sovereign has recognized. The English Courts act on the rule 'that an intention to take away the property of a subject without giving him a legal right to compensation for that intention is expressed in unequivocal terms': *Central Control Board* v. *Cannon Brewery Co.* If it were they must give effect to it, and can hardly be more rigid in their dealings with foreign legislation. Individuals must contribute to the welfare of the state, and at present British citizens who may contribute to the state more than half their income in income tax and super tax, and a large proportion of their capital in death duties, can hardly declare a foreign state immoral which considers (though we may think wrongly) that to vest individual property in the state as representing all the citizens is the best form of proprietary right. I do not feel able to come to the conclusion that the legislation of a state recognized by my Sovereign as an independent sovereign state is so contrary to moral principle that the judges ought not to recognize it. The responsibility for recognition or nonrecognition with the consequences of each rests on the political advisers of the Sovereign and not on the judges."

The Russian decrees extinguished the lives of these companies and appropriated their property and general assets. If those decrees were effective to extinguish their lives abroad as well as at home, why should it not be effective also to take over their property and assets abroad where the companies had branches, to as full an extent as at home, if our political department has made a public

declaration of policy with respect to such legislation which validates it, and the rights of those who have claims against the corporations are safeguarded by our courts under the qualification of the principle of retroaction indicated and the established principles of private international law? When, then, our Government recognized that of Russia, it also recognized its legislation. By that legislation, the government of the Soviets ended the lives of these corporations and took over their assets. That legislation this court is bound to recognize and apply since November 16, 1933, as to matters *res judicata*, in as full a measure as our political department has recognized it, and we are foreclosed from further questioning it by the very act of recognition. Recognition changes a policy of official disfavor into an attitude of graceful acquiescence. To impeach this legislation now in the courts as being against our public policy would clearly trench upon the sphere of the executive who has already decided the matter in a manner that concludes our courts.

As to the question whether the Russian decree is of a penal character, I do not hesitate to say that I cannot so regard it. A statute is penal if it inflicts a penalty for the violation of some of its provisions (*Huntington* v. *Attrill* (1893) A. C. 150, 156, H. of L.; 3 Bourvier's Law Dictionary, 3rd ed. by Rawle, 1914, p. 2551), or, if it fixes upon a wrongdoer any extraordinary liability in favor of the person wronged, not limited to the damages suffered (*Huntington* v. *Attrill*, 146 U. S. 657, 667). It is evident that the reported cases do not indicate that they are vitiated with the criminal or tortious elements which these definitions involve. In *Baglin* v. *Cuzenier* (221 U. S. 580) and *Lecouturier* v. *Roy* (1910) (A. C. 262) which have been cited by counsel as authority against the retroactivity of the supposedly confiscatory legislation of the French Government, must be considered in the light of the French law—the Loi relative au contrat d'association, of July 1, 1901, 63 Bull. des Lois, 12 c. ser., II Sem. (1901), pt. princ., p. 1273)—art. 19 of which provides:

"The provisions of art. 463 of the penal code shall apply to offenses contemplated by the present law."

That law clearly fell within the terms of the first portion of our definition.

The right of the United States to sue in the national court has been questioned on the ground that the balances claimed by appellant are now, as it is alleged in process of adjudication in the state courts, and the majority opinion turns upon this question. To uphold the jurisdiction of the State courts, and avoid giving extra-territorial effect to the Soviet decrees, the majority opinion has taken the unwarranted position that the effect of the dissolution of the insurance company upon its assets was to debase the sovereignty of the State to the status of the corporation. The majority opinion reads: "Consequently we must for present purposes take the Soviet Government to have become to all intents and purposes the Russian insurance corporation in Russia which owned the deposit in New York subject to the fulfillment of the conditions upon which the deposit was made with the New York Superintendent of Insurance."

This position, of course, reverses law, logic, and fact. It reverses law because the dissolution of the corporation and the nationalization of its property did not lower the Soviet Government to the plane of the private litigant without its express consent; it reverses logic because such dissolution did not assimilate the Russian Government with a corporation which was legally nonexistent; and it reverses fact because such nationalization could not involve a debasement of sovereignty. On the contrary, the dissolution and nationalization had the effect of absorbing the assets of the corporation into the rest of the public assets and placing them beyond the reach of the processes of the tribunals of foreign states. Art. 3, § 2 of the Constitution, says:

"the judicial Power shall extend * * * to Controversies to which the United States shall be a Party."

Section 41 of the Judicial Code gives the District Courts original jurisdiction of—

"All suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue."

The government is clothed with full juristic capacity to come into its own courts, either as a party plaintiff or an intervenor, to protect or claim its lawful rights. Of this there can possibly be no doubt. But it is said that since the state courts first acquired jurisdiction and control over the *res*, the United States courts lack authority, under the doctrine of jurisdictional priority repeatedly announced by the Supreme Court (*Lion Bonding Co.* v. *Karatz*, 262 U. S. 77, 88; *Harkin* v. *Brundage*, 276 U. S. 36, 43; *Wabash R.* v. *Adelbert College*, 208 U. S. 38; *Farmers Loan & Trust Co.* v. *Lake Street Elevated R. Co.*, 177 U. S. 51, 61; *Byers* v. *McAuley*, 149 U. S. 608, 614; *Merritt et al.* v. *Amer. Steel-Barge Co.*, 79 Fed. 228 (C. C. A. 8), to entertain these suits and to proceed therein as prayed. To this general principle which, as has been said, is a principle "of right and law, and therefore, of necessity" (*Covell* v. *Heyman*, 111 U. S. 176, 182), and "essential to the dignity and just authority of every court" (*Buck* v. *Colbath*, 3 Wall. 334), I, of course, subscribe. But I perceive no conflict between this salutary rule and the suits brought by the United States in its own courts, if the principles of the retroactivity of recognition and the extraterritoriality of the legislation of a foreign government within the limits already indicated, are regarded in the proper light, and in that light applied to the questions before us.

Upon matters which were *res adjudicata* on November 16, 1933—the date of recognition of the Soviet Government—under principles of private international law underlying questions of this character, such recognition can have no disturbing effect; upon matters which were pending or not decided with the authority of finality on the date of recognition and which involved the properties or assets of

nationalized Russian companies not affected with the application of principles of private international law, it is clear that whatever was done in the State courts was done at the risk of a declaration of nullity, for the courts should have known that they were dealing with the properties or assets of a foreign government whose confiscatory legislation we have approved by the very fact of recognition and by taking an assignment comprising in many instances the fruits of such legislation. Therefore, on the date of recognition the State courts lost jurisdiction and control of the properties and assets in question. The United States was at liberty to proceed in its own courts, without ousting the State courts of jurisdiction, or, of delaying or obstructing the State courts in the exercise of their jurisdiction, or of leading to a conflict of authority between the Federal and the State courts (*Merritt* v. *American Steel-Barge Co.*, 79 Fed. 228 [C. C. A. 8]). In other words, and as a limitation to the principle of jurisdictional exclusion on the grounds of priority, the "possession of the officer of court" was discharged (*Buck* v. *Colbath*, supra) by the act of recognition, as to those matters or claims not affected with the application of principles of private international law. It was, therefore, within the competency of the district courts to entertain the suits filed and to issue the injunctive relief prayed by the United States, since § 265 of the Judicial Code, which forbids the Federal courts "to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy", must be construed in connection with § 262 which authorizes the Federal courts "to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law." *Kline* v. *Burke Constr. Co.*, 260 U. S. 226, 228. It may not be maintained that, if after November 16, 1933, the State courts lost jurisdiction over the assets of the recognized Russian Government, any injunction issuing from a court of the United States would act to stay proceedings in any court of the State within the meaning of the statute. No proceedings can be stayed, no ousting of jurisdiction or custody can occur, no delay or obstruction in the exercise of jurisdiction can take place, no conflict of authority can happen, where lawful jurisdiction is wanting by operation of law.

The decree should be reversed.

United States Circuit Court of Appeals, Second Circuit

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the court rooms in the Post Office Building in the city of New York, on the 27th day of May, one thousand nine hundred and thirty-five.

Present: Hon. MARTIN T. MANTON, Hon. AUGUSTUS N. HAND, Hon. HARRIE B. CHASE, *Circuit Judges*.

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UNITED STATES, PLAINTIFF-APPELLANT

*vs.*

PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY, DEFENDANT-appellee

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed, that the decree of said District Court be and is hereby is affirmed.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

WM. PARKIN, *Clerk.*

(Endorsement on cover:) United States Circuit Court of Appeals, Second Circuit. *United States* vs. *President and Directors of the Manhattan Company.* Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed May 27, 1935. William Parkin, clerk.

United States of America, Southern District of New York

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 147, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of United States, plaintiff-appellant, against president and directors of the Manhattan Company, defendant-appellee, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 27th day of June, in the year of our Lord one thousand nine hundred and thirty-five, and of the Independence of the said United States the one hundred and fifty-ninth.

[SEAL] WM. PARKIN, *Clerk.*

U. S. GOVERNMENT PRINTING OFFICE: 1935

149 Supreme Court of the United States

*Order allowing certiorari*

Filed October 14, 1935.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.